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Administration of justice at the United Nations

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Report of the Secretary-General

Summary

The General Assembly, by its resolutions 61/261, 62/228 and 63/253, decided to establish an independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice for the United Nations, which entered into operation on 1 July 2009.

The Secretary-General is gratified by the General Assembly's positive recognition of the implementation of the new system in its resolution 65/251, in which the Assembly noted the achievements of the new system since its inception, including improved disposition of old and new cases, and commended all those involved in managing the transition from the prior system or in the implementation of the present one.

The General Assembly also acknowledged the evolving nature of the new system and indicated that its progress would need to be carefully monitored to ensure that the system remained consistent with the governing principles set down in the establishing resolutions, namely that the system must be independent, transparent, professionalized, adequately resourced and decentralized, and with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike.

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In the present report, the Secretary-General describes the accomplishments of the new system of administration of justice during the reporting period from 1 July 2010 to 31 May 2011. The processing of cases through all phases of the formal system continues to demonstrate a marked improvement in efficiency. During the period from 1 July 2010 to 31 May 2011, the Management Evaluation Unit received 390 requests for review and closed or resolved 281 matters. The Office of Staff Legal Assistance resolved approximately one third of the more than 850 cases for which it was responsible during the same period. From 1 July 2010 to 31 May 2011, the offices representing the Secretary-General before the United Nations Dispute Tribunal handled cases that resulted in 195 judgements, and the Office of Legal Affairs handled cases that resulted in 90 judgements of the United Nations Appeals Tribunal.

However, the success of the system and the productivity of the offices that service it have resulted in serious strains upon the financial and human resources of those offices and units. As the Secretary-General indicated in his report on the administration of justice to the General Assembly at its sixty-fifth session (A/65/373 and Corr.1), there is a need for significant strengthening in a number of key areas in order to maintain the current pace of work and continue to implement all of the Assembly's mandates for the new system.

In its resolution 65/251, the General Assembly requested the Secretary-General to provide data and information on the functioning of the new system and related matters. The present report provides a consolidated response to those requests.

In addition, the present report contains a request for additional resources amounting to $8,657,900 (before recosting) under sections 1, 8, 19, 29A, 29C, 29D, 29E, 29G and 37 of the proposed programme budget for the biennium 2012-2013 in the light of the experience to date.

Contents

		Page
I.	Overview	4
II.	Review of the formal system of justice	4
	A. Management Evaluation Unit	4
	B. United Nations Dispute Tribunal	8
	C. United Nations Appeals Tribunal	14
	D. Office of Staff Legal Assistance	17
	E. Office of the Executive Director	20
	F. Legal offices representing the Secretary-General as respondent	23
III.	Responses to questions relating to administration of justice	39
	A. Overview	39
	B. Responses	39
IV.	Issues relevant to the review by the General Assembly of the statutes of the Tribunals	49
	A. Introduction	49
	B. Rules of Procedure of the Tribunals	50
	C. Jurisdiction of the United Nations Dispute Tribunal over acts and omissions by independent entities in connection with the performance of their operational mandates	54
V.	Resource requirements	60
VI.	Conclusions and actions to be taken by the General Assembly	62
Annexes		
I.	Proposals for staff-funded mechanisms to fund the Office of Staff Legal Assistance	63
II.	Proposal for recourse mechanisms for non-staff personnel	69
III.	Compensation awarded by the Management Evaluation Unit, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal	79

I. Overview

1. The General Assembly, by its resolutions 61/261, 62/228 and 63/253, established a new system of administration of justice. The system has two Tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are staffed by professional judges and supported by Registries in Geneva, Nairobi and New York. In accordance with the General Assembly's view that legal assistance should be provided to staff, the new system also includes the Office of Staff Legal Assistance, staffed by professional legal officers in Addis Ababa, Beirut, Geneva, Nairobi and New York. In order to ensure that the system is independent, the Office of Administration of Justice administers the elements of the formal system, providing administrative, operational and technical support to the Tribunals, the Registries and the Office of Staff Legal Assistance, as well as to the Internal Justice Council.

2. Management evaluation, which constitutes the mandatory first step of the formal system of administration of justice, is conducted within the Department of Management and the separately administered funds and programmes. The Management Evaluation Unit of the Department of Management, staffed by professional legal officers, conducts the first review of a contested decision. The Unit is designed to give management a chance to correct an improper decision or provide acceptable remedies in cases where the decision has been flawed, thereby reducing the number of cases that proceed to formal litigation. Similar mechanisms also exist in the funds and programmes.

3. The enhancement and professionalization of the system, in addition to the increased number of cases, have required that the offices and units representing the Secretary-General as respondent provide significantly more services at a greatly increased pace.

4. The system continues to make progress on processing the considerable number of cases that were transferred from the various organs of the old system. In order to prevent the backlog of cases from overwhelming the new system, the General Assembly appointed three ad litem judges for the United Nations Dispute Tribunal and judicial staff to support them.

II. Review of the formal system of justice

A. Management Evaluation Unit[1]

5. The Management Evaluation Unit is located in the Office of the Under-Secretary-General for Management and is the first step in the formal system of administration of justice. The core functions of the Unit are: (a) to conduct prompt management evaluations of contested administrative decisions relating to contracts of employment or terms and conditions of appointment; (b) to assist the Under-Secretary-General for Management in providing staff members requesting management evaluation with a prompt and reasoned response regarding the outcome of the evaluation; and (c) to assist the Under-Secretary-General in ensuring

[1] The separately administered funds and programmes handle management evaluations independently.

managerial accountability by ensuring the compliance of managers with their responsibilities in the management of the human and financial resources of the Organization.

6. From the time of its inception on 1 July 2009 to 31 May 2011, the Management Evaluation Unit received a total of 823 cases, including 184 cases in 2009, 427 cases in 2010 and 212 in 2011. Of the 823 cases received, the Unit completed and closed 665 cases. As at 31 May 2011, it had recommended compensation in 18 cases, which amounted to $183,339.44. A breakdown of this figure is contained in annex III to the present report.

7. The management evaluation process provides the Administration with the opportunity to prevent unnecessary litigation before the Dispute Tribunal, resulting in significant cost savings to the Organization. Approximately 36 per cent of cases received and closed by the Unit in 2010 were settled through informal resolution efforts either by the Unit itself, by the Office of the Ombudsman or through bilateral negotiations between the Administration and the staff members.

8. In approximately 84 per cent of the cases submitted to the Management Evaluation Unit that were not resolved informally, the contested decision was upheld by the Secretary-General following a determination by the Unit that the decision was consistent with the Organization's rules and jurisprudence.

9. In conformity with the decision of the General Assembly to establish, inter alia, a transparent system of administration of justice (resolution 61/261, para. 4), where the Management Evaluation Unit has recommended that a contested administrative decision be upheld, a written reasoned response is sent to the staff member concerned setting out the basis for the management evaluation, including the facts of the case, a summary of the comments on the case provided by the decision maker, the applicable rules and jurisprudence of the Organization, an explanation of the reasons why the Unit considered that the contested decision comported with the applicable rules and jurisprudence, and the final decision of the Secretary-General. The funds and programmes follow a similar methodology in their management evaluation process.

10. Staff members have the statutory right to take their cases to the Dispute Tribunal for a trial of the matter following the conclusion of the management evaluation process (General Assembly resolution 62/228, para. 51). The Management Evaluation Unit considers that staff members who have sought recourse to the formal system owing to a perceived lack of transparency in the administrative decision-making process are more likely to decide not to pursue their statutory recourse to the Dispute Tribunal when they perceive the management evaluation process to be impartial, objective and accurate. The Unit also considers the written reasoned response provided to staff members at the conclusion of the management evaluation process to be an important means of establishing the credibility of the management evaluation process, in particular, and the new system of administration of justice in general. The funds and programmes share this view.

11. In order to determine the number of staff members who seek recourse to the Dispute Tribunal following the receipt of a management evaluation upholding a contested administrative decision, the Management Evaluation Unit is working with the Office of Administration of Justice to implement a tracking mechanism.

12. As at 31 December 2010, in 83 per cent of the cases considered by the Dispute Tribunal following management evaluation, the Tribunal's disposition of the case was the same as that recommended by the Management Evaluation Unit. Although there are key issues of law that have yet to be determined by the Appeals Tribunal, and the Unit has limited fact-finding capability, this degree of similitude is instructive and can be construed as indicative of the impartiality, objectivity and accuracy of the Unit.

13. In providing assistance to the Under-Secretary-General for Management to ensure managerial accountability, the Management Evaluation Unit regularly reviews its caseload to identify trends and systemic issues, which are set out in its reports. The Unit also provides secretariat support to the Under-Secretary-General in the compilation of the lessons-learned guide for managers and guidance notes that are circulated to all heads of offices and departments. The lessons-learned guide for managers includes a review of the jurisprudence of the Dispute and Appeals Tribunals and examines how they interpret and apply the internal rules of the Organization. In 2010, the Under-Secretary-General circulated two volumes of the lessons-learned guide for managers. In April 2011, he circulated a guidance note and is expected to circulate another volume of the lessons-learned guide in the latter part of 2011.

Statutory time limits

14. Management evaluations are required to be completed within a limit of 30 calendar days for Headquarters and 45 calendar days for offices away from Headquarters after the submission of such a request (General Assembly resolution 62/228, para. 54). Deadlines may be extended in cases where the matters have been referred to the Office of the Ombudsman under conditions specified by the Secretary-General.

15. In the report of the Advisory Committee on Administrative and Budgetary Questions (A/65/557, para. 16), it was stated that every effort should be made to resolve cases before staff members resort to litigation and that the management evaluation function was an important opportunity to do so by allowing for faulty administrative decisions to be addressed.

16. In conformity with the direction of the Advisory Committee on Administrative and Budgetary Questions, in cases where the Management Evaluation Unit has concluded that the contested decision does not comport with the internal rules of the Organization, and the Under-Secretary-General for Management has endorsed an informal resolution, the Management Evaluation Unit will seek to facilitate the resolution directly between the parties. It has been the experience of the Unit that informal resolution involves extensive consultations between the parties and is often a lengthier process than is permitted by the statutory time frames provided for management evaluations. However, there are no statutory provisions that allow the Secretary-General to place the management evaluation process in abeyance with the consent of the parties involved in cases where the Management Evaluation Unit facilitates an informal resolution. The funds and programmes agree with this view but note that they have been successful in achieving this outcome with the consent of both parties.

17. Similarly, there are no statutory provisions for extending the deadlines for completing management evaluations in cases where staff members make

supplementary submissions after they file their requests for management evaluation, either on their own initiative or at the request of the Management Evaluation Unit.

18. The Management Evaluation Unit considers that stringent adherence to statutory time frames could cause staff members to receive incomplete or inaccurate management evaluations and, as a result, to unnecessarily seek recourse to the Dispute Tribunal. To avoid this result, the current practice of the Unit is to seek an extension of the deadline from the staff member in order to facilitate informal resolution or where additional submissions from the staff member and/or the Administration are required to properly conclude the management evaluation process. The Unit considers cases to be concluded in a timely manner either when they have been concluded within the relevant statutory time frame or when they have been concluded within a time frame to which the staff member has consented for the purpose of facilitating informal resolution or obtaining additional information necessary to ensure a comprehensive management evaluation. The funds and programmes share this view and note that they have been successful in meeting the statutory deadline in all cases to date.

19. The staffing complement of the Management Evaluation Unit comprises a Chief (P-5), who reports to the Director of the Office of the Under-Secretary-General for Management, two Legal Officers (P-4), one Legal Officer (P-4) (general temporary assistance) and three Legal Assistants (General Service (Other level)). However, the current staffing resources of the Unit are inadequate to meet its mandate, and it has been obliged to temporarily fill an additional legal officer post by way of limited budgetary discretionary funding since February 2010.

20. The Management Evaluation Unit considers that the addition of a third legal officer post at the P-3 level is warranted based on the volume of cases received during the nearly two years of its operations. The figures demonstrate that the number of users of the new system of administration of justice is already greater than that of the previous system. Furthermore, on the basis of data gleaned from its caseload, the Unit expects to receive at least the same number of cases in 2011 as it did in 2010 (approximately 427).

21. With regard to the 184 cases received in 2009, the Management Evaluation Unit observed that there was a 23 per cent decrease in the number of cases submitted in the fourth quarter of 2009 compared with the number of cases submitted in the third quarter of that year. With respect to the 427 cases submitted in 2010, the Unit observed a steady increase in the number of cases submitted in the first two quarters of 2010, followed by a decrease in cases submitted in the third and fourth quarters of 2010, respectively. In this regard, the Unit observed that 57 per cent of the cases submitted in 2010 were submitted between 1 January and 30 June 2010 and 43 per cent between 1 July and 31 December 2010, with the most significant decrease in cases submitted between 1 October and 31 December 2010. Finally, the Unit has noted an upswing in the number of cases submitted between 1 January and 31 May 2011 compared with the number of cases submitted between 1 July and 31 December 2010. While the Unit received 183 cases in the latter period of 2010, it had already received 212 cases in the first five months of 2011, which is the same number of cases received in the first five months of 2010.

22. The Management Evaluation Unit considers that the decrease in the number of cases submitted in the final quarters of 2009 and 2010 and the increase in the number in the first two quarters in 2010 and 2011 could be indicative of an

emerging cyclical pattern. However, the total number of cases received between 1 July 2009 and 30 June 2010 is expected to be the same as the number received between 1 July 2010 and 30 June 2011 (approximately 427).

23. As noted above, timely, well-reasoned management evaluations are essential to the successful fulfilment of the Management Evaluation Unit's mandate. The Unit has met its mandate as a result of the addition of a temporary Legal Officer post, funded through discretionary funds since February 2010. Furthermore, the figures show that the Unit has been able to meet its mandate with its current staffing arrangements because its staff members have consistently worked overtime and have deferred or have not taken annual leave.

24. The Management Evaluation Unit considers that a request for one additional Legal Officer (P-3) post is therefore conservative in the circumstances, since an additional Legal Officer will not fully cover the shortfall between the number of person-hours required per year to fulfil the Unit's mandate (1,828) and the number of person-hours per year that staff members working in the Secretariat are normally required to work (1,463).

25. **For the reasons set forth above, the Secretary-General recommends that the Management Evaluation Unit be strengthened with an additional Legal Officer at the P-3 level.**

B. United Nations Dispute Tribunal

1. Composition of the United Nations Dispute Tribunal

26. On 2 March 2009, the General Assembly elected three full-time judges and two half-time judges. Subsequently, the Assembly elected three ad litem judges for a period of one year to assist in handling the backlog of cases transferred from the old system. At the time of the preparation of the present report, the composition of the Tribunal was as follows:

(a) Judge Vinod Boolell (Mauritius), full-time judge based in Nairobi;

(b) Judge Memooda Ebrahim-Carstens (Botswana), full-time judge based in New York;

(c) Judge Thomas Laker (Germany), full-time judge based in Geneva;

(d) Judge Goolam Hoosen Kader Meeran (United Kingdom of Great Britain and Northern Ireland), half-time judge;

(e) Judge Coral Shaw (New Zealand), half-time judge;

(f) Judge Jean-François Cousin (France), ad litem judge based in Geneva;

(g) Judge Nkemdilim Amelia Izuako (Nigeria), ad litem judge based in Nairobi;

(h) Judge Marilyn Kaman (United States of America), ad litem judge based in New York.[2]

[2] Judge Marilyn Kaman tendered her resignation from the Dispute Tribunal effective 30 June 2011.

27. At its sixty-fifth session, the General Assembly decided to extend the tenure of the three ad litem judges and their support staff for an additional six months until 31 December 2011 (see resolution 65/251).

2. Election of the President

28. At the plenary meeting held in Nairobi from 28 June to 2 July 2010, Judge Thomas Laker was elected President for one year, from 1 July 2010 to 30 June 2011.

3. Plenary meetings

29. Since 1 July 2010, the judges of the Tribunal have held two plenary meetings (from 13 to 17 December 2010 in Geneva and from 27 June to 1 July 2011 in New York).

4. General activity of the United Nations Dispute Tribunal

30. During the period from 1 July 2010 to 31 May 2011, the Dispute Tribunal received 170 new cases. As at 31 May 2011, the Tribunal had 254 pending cases.

31. Of the 170 cases received during the reporting period, 108 originated from the Secretariat (excluding peacekeeping and political missions), including the regional commissions, offices away from Headquarters, the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia, and various departments and offices; 19 originated from peacekeeping and political missions; and 43 originated from agencies, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF).

5. Cases transferred to the United Nations Dispute Tribunal from the former system

32. On 1 July 2009, following the abolition of the Joint Appeals Board and the Joint Disciplinary Committee in Geneva, Nairobi, New York and Vienna, 169 cases pending before those entities were transferred to the Dispute Tribunal. Sixty-one cases were transferred to the Registry in Geneva, 55 to the Registry in Nairobi and 53 to the Registry in New York. From 1 July 2010 to 31 May 2011, 29 of these cases were disposed of.

33. On 1 January 2010, 143 cases were transferred from the United Nations Administrative Tribunal to the Dispute Tribunal. They were distributed among the branches of the Dispute Tribunal as follows: 51 cases to Geneva, 40 to Nairobi and 52 to New York. From 1 July 2010 to 31 May 2011, 76 of these cases were disposed of.

34. As at 31 May 2011, 65 cases transferred from the former system were pending: 10 cases from the Joint Appeals Board or the Joint Disciplinary Committee and 55 from the United Nations Administrative Tribunal.

6. Number of judgements, orders and hearings

35. During the period from 1 July 2010 to 31 May 2011, the Dispute Tribunal issued 195 judgements and 638 orders, and held 229 hearings.

7. Cases referred to the Mediation Division

36. From 1 July 2010 to 31 May 2011, the Dispute Tribunal identified 13 cases suitable for mediation and referred them to the Mediation Division of the Office of the Ombudsman. Of these, six cases were successfully mediated at the time of the preparation of the present report.

8. Subject matter of cases before the United Nations Dispute Tribunal

37. The nature of the cases before the Dispute Tribunal that were received during the reporting period may be divided into six main categories: (a) appointment-related matters; (b) benefits and entitlements; (c) classification; (d) disciplinary matters; (e) separation from service; and (g) other.

38. Of the 170 cases received during the reporting period, 56 related to appointment; 19 to benefits and entitlements; 2 to classification; 33 to disciplinary matters; 28 to separation from service; and 32 to other matters.

9. Issues relating to staffing of the United Nations Dispute Tribunal and its Registries

39. As detailed above, the volume of cases before the Dispute Tribunal is very heavy, and the requirement to work expeditiously has placed an enormous burden on the judges and staff of the Tribunal. The appointment and subsequent extension of three ad litem judges have allowed the Dispute Tribunal to make significant progress in addressing the backlog of cases inherited from the former system. However, in the light of the trend of new cases filed, it is apparent that if the judicial capacity of the Dispute Tribunal is almost halved by the elimination of the ad litem judge positions at the end of 2011, a new backlog will immediately start to emerge. This would result in one of the most strongly criticized shortcomings of the former system, delay, becoming a daily reality in the new one.

40. The Tribunal is deliberately decentralized to ensure easier access to justice for the applicants. To maintain this access, it is essential that there continue to be two full-time judges at each location of the Dispute Tribunal. The whole point of having a decentralized Tribunal would be defeated if one location had to stop functioning owing to the absence of its sole judge, for example in cases of leave, sickness or resignation. Similarly, the recusal of a judge at one location would automatically entail the transfer of the case to another location farther away from the applicant. Three-judge panels can be established in an effective way only when at least two judges are present in each Tribunal location. Furthermore, there is a statutory requirement for applications for suspension of action to be disposed of in five days, which would be almost impossible for a single judge to achieve without compromising the disposal of substantive applications. Finally, the President of the Dispute Tribunal, who has to direct the work of the Tribunal and the Registries, is reliant on the presence and support of the other judge at his or her location during his or her term of office in order to maintain the flow of cases.

41. The work of the judges of the Dispute Tribunal is not restricted to rendering judgements. The additional required functions, mentioned in the present section, mean that a second full-time judge per duty station is absolutely essential. Judges of the Dispute Tribunal closely monitor the progress of all cases from the receipt of an application to final judgement. This monitoring may include: (a) holding case management hearings; (b) ruling on pre-hearing motions; and (c) issuing

pre-hearing orders. In addition, judges are required to consider applications for suspension of action within a statutory five-day time limit. From an administrative standpoint, judges at each location (Geneva, Nairobi and New York) meet regularly with Registry staff to ensure the regular and timely processing of cases. They also hold biweekly meetings by means of videoconference in order to improve the communication among the judges and make important decisions with respect to the harmonization of practices among the three Registries. The judges are also responsible for drafting rules of procedure; the Tribunal has submitted proposals to the General Assembly for the amendment of the rules of procedure. Furthermore, the judges are committed to issuing practice directions so that the parties to a case are aware of the procedures expected by the Tribunal. As a judicial recess has not been implemented on the calendar of the Dispute Tribunal to date, all of the responsibilities above are in addition to the core judicial function of deciding the merits of a case and issuing a judgement.

42. After two years, the Tribunal is still in its "start-up" phase. Given the different legal backgrounds of the judges, the Tribunal requires continuity of judges and supporting staff to ensure that it becomes a coherent judicial body with a consistent jurisprudence to the benefit of the Organization and its staff members.

43. **For that reason, it is recommended that the General Assembly appoint a second full-time judge to each of the United Nations Dispute Tribunal locations. It is also imperative that the judges receive the necessary support from legal officers and administrative staff. Therefore, the Secretary-General recommends that the P-3 Legal Officers (1 each in Geneva, Nairobi and New York) and the Legal Assistants (1 General Service (Other level) in Geneva, 1 General Service (Other level) in New York and 1 General Service (Local level) in Nairobi) be regularized.**

44. In addition, there is an anomaly in the staffing of the Registry in New York. While the Registries located in Geneva and Nairobi are staffed with a Registrar (P-5) and Legal Officers at the P-4 and P-3 levels, the Registry in New York is staffed with a Registrar (P-5) and Legal Officers at the P-4 and P-2 levels. There is no operational basis for this discrepancy, and in fact, the Registry in New York would greatly benefit from having a second legal officer at the more senior level of P-3. **For this reason, it is recommended that the P-2 Legal Officer post in New York be reclassified as a P-3 post.**

10. Non-staffing-related issues

a. Courtrooms

45. As the new system must be professional in nature, and given the mandate that the hearings of the Dispute Tribunal, in general, be open to the public, the Tribunal must have facilities adequate for a professional court, of sufficient size to permit public access, at each of its locations.

46. Premises have been made available in all three locations of the Tribunal; however, issues relating to the construction of permanent courtrooms remain to be addressed.

47. In New York, because of the capital master plan, a temporary courtroom space has been provided in the temporary premises of the Office of Administration of Justice. The courtroom is operational, but as a temporary space, it is ad hoc in

nature and has no capacity for simultaneous interpretation. Due consideration in the planning phase was given to ensuring that as much of the equipment and furnishings of the temporary space would be able to be removed and installed in the Tribunal's permanent premises upon completion of the capital master plan. No provision has been made, however, for the creation of a permanent courtroom for the Dispute Tribunal in New York after the capital master plan is completed. In Geneva, a permanent space has been provided, but the space does not permit interpretation without additional construction. In Nairobi, the construction of a permanent, dedicated courtroom is under way. However, the 2010-2011 budget of the Office of Administration of Justice provided for no resources for courtroom construction and outfitting. Accordingly, provisions for construction and outfitting have been included in section 34 of the 2012-2013 budget.

b. Travel and communications

48. Another critical mandate for the new system, reiterated by the General Assembly in its resolution 65/251, is that it be decentralized. The Dispute Tribunal and its Registries are located in Geneva, Nairobi and New York. The Tribunal serves staff located in duty stations around the world, with each location serving a substantial geographic region. The success of the Tribunal's decentralization relies heavily on the ability of the Tribunal and its Registries to communicate among themselves and with the parties and witnesses in cases before the Tribunal.

49. When the Dispute Tribunal holds hearings, it is critical that participants be able to fully engage in the proceedings and that the judges be able to assess the demeanour of witnesses appearing before them. Regular travel for either of those purposes would be prohibitively expensive; thus, it was envisaged that those activities would be accomplished primarily by means of videoconference. However, there are significant costs associated with videoconferencing. The current budget for costs associated with communications is inadequate to allow for the Tribunal's effective use of videoconferencing. In addition, it is essential that oral hearings be recorded in a manner that reliably captures all of the input of all parties and the judiciary so that there is an accurate record of the proceedings that can be transcribed if there is a subsequent appeal. **Therefore, the Secretary-General recommends increasing the budget of the Office of Administration of Justice by $25,000 under the line item for communications to cover the costs of videoconferencing for oral hearings and status conferences and biweekly meetings of the judges and registrars of the United Nations Dispute Tribunal and to permit recording of oral hearings of sufficient quality and reliability to be transcribed if required for a subsequent appeal of the judgement.**

50. Under the statute, the Tribunal may order the physical presence of a party or witness when it deems his or her personal appearance to be essential to the proceedings. In addition, there are instances, particularly in cases arising in duty stations in Africa, where it is impossible to hold hearings in Nairobi because of the poor quality or unreliability of the videoconference connection and the fact that interpreters are not able to successfully interpret through telephonic connection. While such situations are expected to be limited in number, they have occurred in the first two years of operation and are expected to continue.

51. Moreover, the judges and the registrars must meet in person periodically to discuss common problems and develop uniform responses to these problems. In

addition, one critical aspect of maintaining a professional system is providing the judges and legal staff with training opportunities to enhance their legal skills and enable them to take part in intellectual discourse among their juristic peers. The present budget does not contemplate the Dispute Tribunal judges and registrars holding any plenary sessions. Furthermore, the judges and legal staff of the Registries are routinely invited to legal symposiums but are unable to attend them owing to severe budgetary restrictions on official travel. This greatly impedes their ability to enhance their skills, interact with their peers and exchange knowledge. **For these reasons, the Secretary-General recommends an increase in the travel budget of the Office of Administration of Justice in the amount of $155,000.**

c. Mechanism for addressing complaints against judges

52. An issue relating to the functioning of the Dispute Tribunal, which also has an impact on the United Nations Appeals Tribunal, is the absence of a mechanism for handling complaints made against judges of the Tribunals. Valid complaints against judges would directly affect the independence, professionalism and accountability of the new system of justice. However, at present, no entity or office has a mandate to engage in the requisite fact-finding, make a determination as to the validity of a claim, impose a sanction or propose one to the General Assembly.

53. The Internal Justice Council reported its concerns regarding the absence of any mechanism for dealing with complaints against judges in its report to the General Assembly at its sixty-fifth session, indicating that it believed this to be a matter requiring urgent attention (see A/65/304, para. 40).

54. The Secretary-General understands that the Internal Justice Council intends to present a proposal for handling complaints against judges of the Tribunals in its report to the General Assembly at its sixty-sixth session. As there is currently no mechanism in place, the Assembly may wish, as an interim measure pending its decision on a permanent mechanism, to authorize the Council to investigate complaints that arise against judges, including any complaints that have already arisen, and to provide its report and recommendations on those complaints to the Assembly for any action that it may deem appropriate.

55. As for a possible permanent mechanism, building upon the preliminary observations on the subject made in his earlier report (A/63/314, paras. 73-79), the Secretary-General offers the following proposals for a mechanism to handle complaints against judges of the Tribunals.

56. When an allegation regarding misconduct or incapacity of a judge is made, the allegation would be reported to the President of the Tribunal in question. The President would then undertake an appropriate investigation of the claim, first determining an appropriate investigative process and subsequently appointing a panel of specialists to conduct the investigation. The investigation would afford the judge against whom the allegations were made all requisite due process, for example, the opportunity to respond to the allegation and submit relevant evidence. If the allegation is made against the President of the relevant Tribunal, in the case of the Dispute Tribunal, the allegation would be directed to the most senior of the other judges of the Tribunal. In the case of an allegation against the President of the Appeals Tribunal, the allegation would be directed to its First Vice-President.

57. Once an investigation has been conducted, the findings would be reviewed by the entire relevant Tribunal, with the exception of the judge under investigation. In cases where it is the unanimous opinion of the judges that the allegation of misconduct or incapacity is well founded, and where the matter is of sufficient severity to suggest that the removal of the judge would be warranted, the President of the Tribunal or his or her alternate would report the matter to the General Assembly and request the removal of the judge.

58. In cases where the alleged conduct, even if determined to be well founded, does not rise to a level that would warrant the removal of the judge, the President or his or her alternate would be given the authority to take appropriate corrective action (for example, issuing a warning or reprimand) that he or she deems appropriate under the circumstances of the case. A report on the disposition of complaints would be submitted annually to the General Assembly. An alternative to this proposal would be that the terms of reference of the Internal Justice Council be amended to provide the Council with the responsibility to investigate and make recommendations regarding any complaint against a judge of the Tribunals. When an allegation regarding misconduct or incapacity of a judge is made, the allegation would be forwarded to the Chair of the Council. The Council would then undertake an appropriate investigation of the claim, first determining an appropriate investigative process that would afford the judge against whom the allegations were made all requisite due process, for example, the opportunity to respond to the allegation and submit relevant evidence.

59. Once an investigation has been conducted, the findings would be reviewed by the Internal Justice Council. When the Council has determined that the allegations of misconduct or incapacity are well founded, the Chair would report the matter to the General Assembly and make a recommendation as to the appropriate sanction.

60. For both options above, the types of misconduct that would warrant the sanctioning of a judge would be violations of the code of conduct for the judges, prepared by the Internal Justice Council and submitted in document A/65/86 for the General Assembly's consideration, in accordance with resolution 62/228, or violations of the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, as set out in Secretary-General's bulletin ST/SGB/2002/9.

C. United Nations Appeals Tribunal

1. Composition of the United Nations Appeals Tribunal

61. On 2 March 2009, the General Assembly elected the following seven judges:

(a) Judge Inés Weinberg de Roca (Argentina);

(b) Judge Jean Courtial (France);

(c) Judge Sophia Adinyira (Ghana);

(d) Judge Mark P. Painter (United States of America);

(e) Judge Kamaljit Singh Garewal (India);

(f) Judge Rose Boyko (Canada);

(g) Judge Luis María Simón (Uruguay).

62. On 11 October 2010, Judge Rose Boyko tendered her resignation from the Appeals Tribunal, for personal reasons, effective 15 January 2011. On 28 January 2011, the General Assembly appointed Judge Mary Faherty (Ireland) to replace Judge Boyko following an election process.

2. Election of the President and Vice-Presidents

63. On 30 June 2010, the Appeals Tribunal elected Judge Courtial as President and Judge Adinyira and Judge Garewal as First and Second Vice-Presidents, respectively, for the period from 1 July 2010 to 30 June 2011.

64. The judges of the Appeals Tribunal have held plenary meetings to deal with administrative and operational questions at the beginning and at the end of each of its five sessions.

3. Judicial statistics

65. From 1 July 2010 to 31 May 2011, a total of 105 new appeals were filed with the Appeals Tribunal: 7 appeals against the United Nations Joint Staff Pension Board, 5 against the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), 1 against the International Civil Aviation Organization and 92 cases appealing judgements and orders of the Dispute Tribunal (65 by staff members and 27 appeals on behalf of the Secretary-General against judgments and orders of the Dispute Tribunal).

66. The Appeals Tribunal held two sessions in New York in 2010, from 21 June to 2 July and from 18 to 29 October, and its first session in 2011, also in New York, from 28 February to 11 March. During the reporting period, the Tribunal rendered 96 judgements. It held its second session in 2011 in Geneva, from 27 June to 8 July, at which it considered 34 cases.

4. Outcome of disposed cases

67. During the period covered by the present report, the Appeals Tribunal issued 96 judgements.[3] Of these, one related to an appeal against the Pension Board, in which the Tribunal upheld the Standing Committee's decision. Four judgements upheld decisions taken by the Commissioner-General of UNRWA.

68. Eighty-three judgements were rendered in appeals against Dispute Tribunal judgements. These judgements decided on 54 appeals filed by staff members and 29 appeals filed on behalf of the Secretary-General. The Appeals Tribunal rejected 46 of the 54 appeals filed by staff members, accepted 3 and remanded 5 to the Dispute Tribunal. Of the 29 appeals filed by the Secretary-General, 9 were dismissed, 19 were accepted, either in full or in part, and 1 was remanded to the Dispute Tribunal. In 12 cases, the Appeals Tribunal overturned or modified the Dispute Tribunal's award of compensation.

69. During the reporting period, 2 requests for interpretation, 2 requests for reconsideration, 2 requests for correction, 3 requests for revision and 1 request to set aside a judgement were filed with the Appeals Tribunal which rejected all 10 requests.

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[3] The number of applications/appeals filed does not necessarily correspond to the number of judgements rendered. There may be occasions where several appeals are disposed of in one judgement or where a case is closed without the issuance of a judgement.

70. As at 31 May 2011, 95 applications/appeals were pending before the Appeals Tribunal.

5. Issues relating to the functioning of the United Nations Appeals Tribunal and its Registry

71. The judges of the Appeals Tribunal meet in sessions, as required by its caseload, generally three times annually, to deliberate and render judgements. Critical to this process is substantial preparation of the cases by the legal and administrative staff of the Registry. While the funding structure and operating methods of the Appeals Tribunal are patterned after those of the Administrative Tribunal of the International Labour Organization (ILO),[4] the ILO Administrative Tribunal has the same number of judges but functions with six full-time Professional legal staff, three General Service staff and other staff on an as-needed basis. In contrast, the Appeals Tribunal Registry has only two Professionals and three General Service staff to support the Tribunal.

72. The Appeals Tribunal is a court of review that considers appeals from both staff and management. Pursuant to article 2.10 of the statute of the Appeals Tribunal, the Secretary-General has also concluded agreements with seven agencies providing them with access to the Tribunal as an administrative tribunal. As the system is new, there has been a high volume of appeals from both staff members and the Secretary-General. The number of cases filed with the Tribunal during the past year is comparable to the workload of the ILO Administrative Tribunal, which considers approximately 110 cases annually and does not accumulate a backlog.

73. The Registry's current staffing is inadequate to fully support the Tribunal and allow it to process cases in a timely way. Two legal officers are insufficient to prepare more than 100 cases annually. This situation will lead inevitably to the accumulation of a backlog and to ever-increasing delay, one of the most highly criticized aspects of the former system. To allow this to occur again would crucially undermine the reform of the system of administration of justice. It is particularly undesirable for lengthy delays to exist between the rendering of a judgement by the dispute tribunal and the final appellate decision, as the outcome of an appealed case may settle the law in a particular area, reducing the number of future cases.

74. There is a need for an additional P-4 Legal Officer to guarantee the Registry's ability to function effectively. There is a need for greater experience in the office, given the complexity of many of the cases and the speed with which they must be processed. A Legal Officer at the P-4 level could supervise the current staff on legal aspects of the work of the Registry, freeing the Registrar to focus on overall supervision, communications with the judges and other stakeholders, and the provision of technical and administrative support to the Tribunal.

75. In addition, a more senior Legal Officer would be capable of providing more substantive legal support to the judges and responding to queries independently, which would increase efficiency and responsiveness. Such a Legal Officer would share administrative functions with the Registrar and act as Officer-in-Charge in his or her absence. **In the light of the volume of cases and the importance of providing the United Nations Appeals Tribunal with sufficient legal support to**

[4] The honorarium for the principal drafter of a judgement is $2,400. Additional signatories receive $600 per judgement.

permit it to function optimally, the Secretary-General recommends that the General Assembly strengthen the Registry of the United Nations Appeals Tribunal with an additional Legal Officer at the P-4 level.

76. In its resolution 65/251, the General Assembly approved, for one year, an additional General Service (Other level) position to support the Appeals Tribunal. The Secretary-General notes that the support provided by this position has been useful. However, there is an urgent need for an additional Legal Officer with adequate seniority to support the judges in their work. **In the light of this fact and mindful of the prevailing budgetary constraints, the Secretary-General recommends that this position not be continued.**

77. Under article 4.2 of its statute, the Appeals Tribunal "shall hold ordinary sessions at dates to be fixed by its rules of procedure, subject to the determination of its President that there is a sufficient number of cases to justify holding the session." Given the experience gained during the Tribunal's first year of operations, and taking into account the number of cases filed with the Tribunal, it is envisioned that the Appeals Tribunal will have sufficient cases to justify meeting in three sessions annually. The Secretary-General notes, however, that the current budget for travel of the Tribunal is insufficient to accommodate a third session. **Therefore, the Secretary-General recommends that additional funding in the amount of $230,000 be made available in the 2012-2013 budget for the Office of Administration of Justice to permit the United Nations Appeals Tribunal to hold a third session if required.**

78. In paragraphs 155 to 164 of his previous report (A/65/373), the Secretary-General reported on the status of the judges of the Appeals Tribunal and their entitlements. In that report, the Secretary-General recommended that the travel privileges and the level of daily subsistence allowance previously provided to the judges of the former United Nations Administrative Tribunal should also be accorded to the judges of the Appeals Tribunal. In paragraph 50 of its resolution 65/251, the General Assembly decided to revert to the issue of travel privileges and the level of daily subsistence allowance of the judges of the Appeals Tribunal in the context of the 2012-2013 budget. **The Secretary-General continues to believe that this course of action would be appropriate and therefore recommends that the travel budget of the Office of Administration of Justice be increased by $50,200 to reflect this.**

D. Office of Staff Legal Assistance

79. The Office of Staff Legal Assistance continues to face many challenges. The Office consists of seven Legal Officers funded through the regular budget (three located in New York and one at each of four satellite offices, in Addis Ababa, Beirut, Geneva and Nairobi) and three General Service staff (all located in New York). As of 1 January 2011, the Office of Staff Legal Assistance was provided with an additional Professional staff member at the P-3 level in Nairobi to support cases involving staff in field missions. This position has been funded for one year through the peacekeeping support account.

80. Despite the limited staffing spread over multiple duty stations, the Office of Staff Legal Assistance has made considerable accomplishments in its first two years of operation. It continues to successfully handle a high volume of requests for

assistance from staff around the world with a small number of legal officers and limited administrative support.

81. As at 1 July 2010, the Office of Staff Legal Assistance had 432 pending cases.[5] Between 1 July 2010 and 31 May 2011, 425 new cases were filed with the Office. Taking into account the number of cases pending with the office as at 1 July 2010, it was involved in 857 matters. The Office has been able to close or otherwise find solutions for 265 of these cases. As at 31 May 2011, the Office had close to 600 active cases. In the second year of its operation, the volume of matters brought to the Office by staff, especially requests from staff located away from the three branches of the Dispute Tribunal, increased, placing significant strains on its limited resources.

82. The Office of Staff Legal Assistance provides many forms of legal assistance to staff, ranging from the provision of summary legal advice to the representation of the staff member before the Tribunals. Significant time may be expended in resolving a matter informally or helping the staff member understand that he or she is unlikely to succeed in a formal claim.

83. The greatest challenge for the Office continues to be responding to the high volume of requests for assistance with a limited number of staff. This is particularly difficult for the legal officers away from New York who work in isolation and without local administrative support. Thus, these legal officers must manage a heavy caseload and the majority of the administration of the office alone.

84. The Office of Staff Legal Assistance is assisted by affiliated volunteer counsel, legal interns and external pro bono counsel. Unfortunately, their numbers are insufficient to resolve the human resources deficit of the Office. It is difficult to identify qualified volunteer, intern and pro bono assistance in offices away from Headquarters, which contributes to the concern that its presence is substantially limited to New York.

85. The General Assembly has reiterated its request to the Secretary-General to work with staff associations in developing incentives to enable and encourage staff to continue to participate in the work of the Office of Staff Legal Assistance. This matter was considered at the session of the Staff-Management Coordination Committee in June 2011, and it was noted that there continue to be differences in opinion between management and staff representatives as to the approach to be taken. Accordingly, staff and management decided that consultations on the issue should continue.

86. The Trust Fund for Staff Legal Assistance, established by the Office of Administration of Justice in January 2010, has not provided sufficient resources to meaningfully assist the Office in augmenting its human resources, even on a temporary basis.

[5] "Case" refers to any of the following: providing assistance or acting as counsel of record before bodies of the formal system (Management Evaluation Unit, Dispute Tribunal, Appeals Tribunal), providing legal guidance and summary legal advice, assisting a staff member in achieving the informal resolution of a dispute, which may involve consultations with the staff member and discussions and negotiations with third parties, or referral to other actors in the system, including the Office of the Ombudsman or staff unions.

87. In the light of the experience gained during its first two years of operation, the Secretary-General believes that the present staffing of the Office of Staff Legal Assistance must be strengthened in order for it to fulfil its mandate. As the Secretary-General indicated in his report to the General Assembly at its sixty-fifth session, the Office suffers in particular from a lack of legal officers at a more senior level, as only one of its Professional staff members is above the P-3 level. **For this reason, the Secretary-General recommends strengthening the Office of Staff Legal Assistance through the addition of two P-4 posts, to be located in Nairobi and New York.**

88. The ability of the Office of Staff Legal Assistance to function efficiently is impaired by the absence of administrative support outside New York. As all administrative support is located at Headquarters, staff members, regardless of their duty station, must initiate their cases through communication with the Office in New York. The clear message to staff is that despite the promise of a decentralized system, core business takes place at Headquarters. **For this reason, the Secretary-General recommends strengthening the Office of Staff Legal Assistance through the addition of two General Service (Other level) posts to provide administrative support in Geneva and Nairobi.**

89. At its sixty-fifth session, the General Assembly agreed with the Secretary-General that the capacity of the Office of Staff Legal Assistance to serve field missions should be strengthened. Accordingly, the Assembly approved, on a temporary basis, an additional P-3 position located in Nairobi to support staff in field missions. This position, funded through the peacekeeping support account for one year, runs from 1 January to 31 December 2011. **In the light of the continuing trend of a large number of cases involving staff from field missions, which demonstrates ongoing need, and further considering that the Department of Field Support and the Department of Peacekeeping Operations participate in the ongoing funding of the formal system on a cost-shared basis, the Secretary-General recommends that the P-3 position in Nairobi dedicated to supporting staff in field missions be continued for a period of one year and funded through the peacekeeping support account.**

90. The non-post resources allocated to the Office of Staff Legal Assistance are also insufficient to permit it to function properly. Despite the fact that, because it is a decentralized office, all its office coordination and a significant portion of client consultation must be conducted by e-mail, telephone and video link, the Office has a communications budget that is insufficient to permit even modest amounts of telephone and video-link communication. In addition, the staff of this decentralized office, which has locations around the globe, must be able to communicate with one another outside the office and outside normal business hours. While the use of smartphone devices such as BlackBerries facilitates this, the current budget is insufficient to fund their use. **For this reason, the Secretary-General recommends that there be an increase of $11,200 in the communications line item in the 2012-2013 budget.**

91. Although they are rare, there are times when physical travel cannot be avoided. The legal officers serving in offices away from Headquarters serve a wide geographic area, including many field missions. If staff are to have meaningful access to the Office of Staff Legal Assistance, particularly in the field, its legal officers must periodically visit the duty stations that they serve in order to meet with

clients and engage in face-to-face negotiations with local administration, facilitating informal dispute resolution. Legal officers of the Office in Addis Ababa and Beirut may be required to physically attend hearings of the Dispute Tribunal on behalf of clients, as ordered by the Tribunal. **At present, there is no travel budget for the Office of Staff Legal Assistance to meet any of these critical requirements. Accordingly, the Secretary-General recommends that the Office's travel line item be increased by $15,000 in the 2012-2013 budget.**

92. Finally, the current budget of the Office, particularly for those offices located away from New York, is insufficient to provide for basic office requirements, such as the rental or purchase of a photocopier and scanner, and the purchase of key office supplies such as paper, binders, paper clips and pens. The lack of these basic office necessities in the one-person offices away from Headquarters compounds the difficulties faced by these isolated legal officers. **For this reason, the Secretary-General recommends that the line item for supplies and materials be increased by $9,000 in the 2012-2013 budget.**

E. Office of the Executive Director

1. Review of the Office of the Executive Director

93. The Office of the Executive Director is responsible for overseeing the administration of all of the elements of the formal system other than the representation of the Secretary-General as respondent. The Office, consisting of the Executive Director, the Special Assistant, two information technology specialists and one administrative support staff member, provides administrative, operational and technical support to the Tribunals, Registries and the Office of Staff Legal Assistance. This operational support has included coordinating with other relevant offices to facilitate the creation of a temporary courtroom facility in New York and similar coordinating efforts to provide for permanent office and courtroom facilities for the Office of Administration of Justice upon the completion of the capital master plan.

94. In addition to providing daily support to the above-mentioned units, the Office of the Executive Director is responsible for coordinating the preparation of the reports of the Secretary-General pursuant to relevant General Assembly resolutions. The Office also represents the formal system both within the United Nations and before external bodies, and in all matters requiring interdepartmental coordination and consultation.

95. Among the other accomplishments of the Office is the establishment of the website of the Office of Administration of Justice, which was launched on 28 June 2010 and is available in all six official languages. The website (www.un.org/en/oaj) is easy to navigate and provides practical step-by-step information on all aspects of the formal system. In May 2011, there were 7,690 visits to the website, which represents a 13 per cent increase in visits compared with the previous month. Since the website was launched, the average number of visits per month has been approximately 7,000. Overall, there is a trend of increasing use of the website. The Office of Administration of Justice continues to improve the website, including by creating functionality for searching orders and judgements of the Tribunals, which has been requested by users.

96. Another major milestone was the launching, on 6 July 2011, of the web-based electronic case management system, which includes the capacity to enable staff members from any duty station to file and monitor their cases electronically. The system is expected to increase efficiency, reduce delays and improve the functioning of the Registries. In addition, the implementation of the case management system provides an easy-to-access gateway to the elements of the formal system for staff members around the world.

97. The Office has successfully negotiated agreements with all of the entities that had access to the United Nations Administrative Tribunal in the prior system, pursuant to article 2.10 of the statute of the Appeals Tribunal.[6] Those agreements, signed by the Secretary-General, provide those entities with access to the Appeals Tribunal as an administrative tribunal.

98. In addition to its role in preparing and coordinating reports to the General Assembly on the administration of justice, the Office of the Executive Director provides substantial assistance in organizing the election of judges to the Tribunals when necessary.

99. Another important function of the Office of the Executive Director is to provide support to the Internal Justice Council in its work, including in preparing its reports to the General Assembly, as requested in resolutions 62/228 and 65/251, and in transmitting its views on the implementation of the new system of administration of justice.

100. The Office also provides significant administrative and technical support to the Internal Justice Council as it undertakes to assist the General Assembly in identifying candidates for judicial vacancies that will occur at the expiration of the three-year terms of judges in the Dispute and Appeals Tribunals on 30 June 2012.

2. Issues relating to the functioning of the Office of the Executive Director

101. The Office of the Executive Director is the focal point for organizing all of the technical, budgetary and logistical aspects of each of the substantive units within the Office of Administration of Justice. The role and functions of the Executive Director are substantial. The Executive Director plays a pivotal role in maintaining the independence of the formal system and is responsible for the coordination of the independent elements of the formal system, including oversight and coordination of the Registries and of the Office of Staff Legal Assistance. The Executive Director also represents the formal system both within the United Nations and before external bodies, and liaises with the heads of other United Nations offices, including the Office of the Ombudsman and Mediation Services.

102. In paragraph 34 of its resolution 65/251, the General Assembly requested the Secretary-General to submit proposals on the appropriate post level for the Executive Director of the Office of Administration of Justice. The Secretary-General considers that this issue should not be viewed in isolation from a corollary issue, which is the level of judges of the Dispute and Appeals Tribunals and the mechanisms for remunerating them. The judges of the Tribunals are non-staff

[6] These entities are: the International Tribunal for the Law of the Sea; the United Nations Joint Staff Pension Fund; the International Civil Aviation Organization; the International Maritime Organization; the United Nations Relief and Works Agency for Palestine Refugees in the Near East; the International Seabed Authority; and the International Court of Justice.

officials. In the case of the judges of the Dispute Tribunal, they work on a full-time basis and are remunerated at the equivalent of the D-2, step IV, level. The judges of the Appeals Tribunal do not work full time, but meet in sessions every year to decide cases. Their remuneration does not reflect any specific post level, and they receive an honorarium per judgement rendered. The principal drafter of a judgement receives $2,400 and additional signatories $600 per judgement. It is apparent, after two years of experience gained, that this mechanism for remuneration raises some issues with respect to necessary intersessional functions of the Appeals Tribunal. Accordingly, the Secretary-General recommends that the General Assembly request the Internal Justice Council to examine the issue of the level of remuneration and remuneration mechanisms with respect to the judges of both Tribunals, as appropriate, and to report thereon to the Assembly at its sixty-seventh session, when the Assembly will consider the report of the Council on this matter, in conjunction with the issue of the appropriate post level for the Executive Director of the Office of Administration of Justice.

103. As described above, the tasks of the Office are very extensive. There is a need for an additional legal officer to assist with the high volume of work. The Professional staff of the Office of the Executive Director are legal, and information technology specialists and have only limited experience in key administrative areas, in particular United Nations budgeting.

104. It is clear that the Office would benefit from the addition of a legal officer with experience in administration and budget and of an administrative support position. However, in the light of financial constraints, no additional resources are currently requested in this area.

105. The Office of Administration of Justice facilitates the work of the Internal Justice Council. This independent body of senior jurists has a critical oversight function in the new system and has a substantial mandate. In paragraph 52 of its resolution 65/251, the General Assembly stressed that the Council could help to ensure independence, professionalism and accountability in the system of administration of justice and encouraged the Council to continue to provide its views on the implementation of the system of administration of justice and to report to the Assembly at its sixty-sixth session on ways in which its contributions might be enhanced.

106. Despite this, no express provision has been made in the current or prior budgets of the Office of Administration of Justice for remuneration of the external members of the Council when they carry out their considerable functions. Nor does the budget of the Office of Administration of Justice contain funds for general temporary assistance to accommodate maternity leave or long-term sick leave of staff members. Furthermore, there are no funds to hire temporary staff on a project basis or to cover periods of peak workload. **Accordingly, the Secretary-General recommends that funds for general temporary assistance in the amount of $130,000 be included in the 2012-2013 budget.**

107. The Executive Director and members of his staff must travel periodically to participate in meetings, both within the Office of Administration of Justice (for example, to the plenary sessions of the Dispute and Appeals Tribunals) and in the wider organizational context, such as the annual meeting of the Staff-Management Coordination Committee. There also continues to be a need for outreach to staff and managers located away from Headquarters, which necessitates travel by the

Executive Director and his staff. The travel budget of the Office of Administration of Justice must accommodate all travel by the Executive Director and his staff and also accommodate the travel of staff relating to the plenary sessions of both Tribunals, the travel of staff of the Office of Staff Legal Assistance or other participants in the hearings when required by the Tribunals, and any other travel of staff of the Office of Administration of Justice. Because travel related to the judicial functions of the Tribunals must be prioritized, there is no meaningful travel budget for the Executive Director and his staff. The Office's travel budget is also insufficient to permit the members of the Internal Justice Council, who are not co-located, to travel to meet on an annual basis or to undertake any other travel to perform their essential task of evaluating the functioning of the system globally and reporting back to the General Assembly. **For these reasons, the Secretary-General recommends that the travel budget of the Office of Administration of Justice be increased by $30,000 in the 2012-2013 budget.**

108. The mandate of the Office of Administration of Justice to be a decentralized office requires substantial dependence on technological solutions. Two of the Office's accomplishments in this area over the past year have been the establishment of a comprehensive website in all official languages and the implementation of a case management system with the capacity to allow all staff members, regardless of location, to file cases with the Tribunals and monitor them. While these important accomplishments save time, resources and money, they must be maintained and improved to keep pace with requirements. In addition, as off-the-shelf solutions were utilized to avoid costly bespoke systems, these products involve the renewal of annual licences and maintenance contracts. Furthermore, there are operating costs associated with data storage, system updates and adjustments based on lessons learned. The budget of the Office of Administration of Justice does not currently cover all of the licence, maintenance and upgrade costs associated with the systems that have been put in place. **For these reasons, the Secretary-General recommends an increase of $75,000 in the 2012-2013 budget of the Office of Administration of Justice in the areas of contractual services and acquisition of software packages.**

F. Legal offices representing the Secretary-General as respondent

109. Several offices represent the Secretary-General as the respondent in cases brought by staff members. Owing to the continued high volume of cases filed by staff members and the complexity of many of them, the offices and units representing the Secretary-General as respondent are functioning at or beyond capacity, given their existing staff and resources.

1. Legal offices representing the Secretary-General before the United Nations Dispute Tribunal

110. In his role as respondent before the Dispute Tribunal, the Secretary-General is represented by staff located at Headquarters and in offices away from Headquarters located in Geneva, Nairobi and Vienna.

111. In response to the needs of the new justice system, managers have redeployed staff within the Organization and recruited staff with the requisite skills to serve the

system. As a result, the Organization has responded to the demands of the new system, which is being implemented throughout the Organization.

112. In 2010, 218 judgements were issued. The judgements provide an analysis of the background of the dispute, a reasoned application of the relevant staff regulations and rules, and findings on the factual and legal issues before the Dispute Tribunal. The judgements reflect the extensive submissions on the facts and the law presented by the parties during the course of the proceedings.

113. In order to fulfil the standards set by the new system, acute demands are placed on the offices representing the Secretary-General before the Dispute Tribunal. This section details the roles of the respective offices, the resources dedicated to the system, the statistics reflecting the volume of cases handled by the representatives of the Secretary-General, information on the outcome of the proceedings, and the Administration's response to the jurisprudence.

114. The new justice system has brought with it new demands on the Administration. Together with the structural changes to the system, the Administration has been required to respond quickly and decisively to the resource and management challenges that it faces. In order to maintain the strength of the representation of the Secretary-General and enhance the capacity of the Secretary-General to respond to ongoing demands, it is important that the initiatives taken by management be preserved and consolidated. Furthermore, it is important that the global Secretariat continue to develop a fully integrated approach to the management of the representation of the Secretary-General before the Tribunals, which includes regular consultation and briefings among the staff of the offices representing the Secretary-General.

Administrative Law Section, Office of Human Resources Management

115. The Administrative Law Section, located in the Office of Human Resources Management, comprises an Appeals Unit and a Disciplinary Unit. The Section is responsible for representing the Secretary-General in his role as respondent before the Dispute Tribunal with respect to cases filed by staff serving across the global Secretariat, as well as cases from staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. Cases brought by staff of the United Nations Offices at Geneva, Nairobi and Vienna, the United Nations Environment Programme (UNEP) and the United Nations Human Settlements Programme (UN-Habitat) are handled by officials at those duty stations. The Section also handles disciplinary matters referred to the Office of Human Resources Management relating to all Secretariat staff and staff of the International Tribunals, and provides advice to managers on the justice system in general, as well as on aspects of individual appeals and disciplinary cases.

Appeals

116. Upon the receipt of an application from the Dispute Tribunal, the Administrative Law Section is responsible for obtaining comments on the application from managers involved and for drafting a reply. The time limit for submitting a reply is 30 days, requiring prompt action from both the managers involved and the Section.

117. During the course of the proceedings, the legal officers of the Administrative Law Section participate in directions hearings and hearings on the merits, and make further written submissions as ordered by the Tribunal. Attendance at hearings requires substantial time for preparation, which includes consulting with the offices concerned and with the Office of Legal Affairs, where appropriate; meeting with witnesses to be called by the respondent; and preparing for the cross-examination of witnesses called by the applicant or his or her counsel and/or by the Tribunal.

118. The Administrative Law Section is also responsible for advising the Administration as to whether efforts towards informal resolution should be pursued or whether the litigation should be continued. The recommendations provide an analysis of the factual and legal issues arising in the case, and advice as to the most cost-effective way of resolving the dispute. If the recommendation to seek informal resolution is accepted, the Section is responsible for obtaining the necessary approvals, providing advice in the course of the negotiations with the applicant and/or his or her counsel, working with the Office of the Ombudsman to finalize the settlement agreement and following up on its implementation. The negotiations are frequently protracted and demanding; however, the potential benefit of resolving the dispute informally is substantial.

119. When a final judgement is issued, the Administrative Law Section liaises with the Office of Legal Affairs, which determines whether to appeal the judgement to the Appeals Tribunal. The Section is also responsible for interpreting the final judgements of the Dispute Tribunal, obtaining information necessary for the implementation of the judgements and conveying the judgements to the relevant officials for implementation.

120. The Section also represents the Secretary-General in suspension-of-action proceedings, in which a party seeks the urgent suspension of the implementation of an administrative decision. These applications must be resolved without delay. Within five days of the request, a response is filed, and an oral hearing is conducted. The Tribunal issues an order either accepting or rejecting the request within days of the hearing. These hearings require urgent attention and intensive preparation. It is particularly difficult to meet the deadlines when the office concerned and potential witnesses are located away from Headquarters and time differences are at issue.

121. During the reporting period, the Administrative Law Section handled 318 appeals cases; at any given time, it has approximately 200 files pending before the Dispute Tribunal. Approximately 50 per cent of the files concern appointment-related issues; 20 per cent are disciplinary appeals; 15 per cent relate to benefits and entitlements; 5 per cent relate to separation from service; 1 per cent relate to classification; and 9 per cent relate to other matters.

122. During the period from 1 July 2010 to 30 June 2011, the Dispute Tribunal issued judgements in 114 cases handled by the Section. Sixty-four applications were decided on the merits; 17 were dismissed on grounds of receivability; 14 were informally settled and withdrawn; 5 were withdrawn by the staff member; 5 related solely to compensation; and 9 were abandoned by the applicant. In addition, 12 requests for suspension of action were determined by the Tribunal. Three were granted, four were dismissed and five were either settled or abandoned.

123. Of the cases decided on the merits, 38 were decided in favour of the Secretary-General and 21 in favour of the staff member, and on 5 occasions the Administration

successfully defended the staff member's principal claim; however, a minor claim succeeded. Where the Applicant succeeded on the merits either fully or partially, compensation was awarded in 20 cases.

124. The new working methods, the high number of appeals to be addressed, the shortened deadlines for the submission of the respondent's replies (from two months to 30 days) and the time differences between New York and the other duty stations where client departments/offices, witnesses and the Tribunal branches are located have resulted in a heavy workload and increased pressure for staff of the Section.

Disciplinary matters

125. The Administrative Law Section is also responsible for handling disciplinary matters referred to the Office of Human Resources Management for action. During the reporting period, the Section was responsible for 391 disciplinary matters, including 121 new cases received during the reporting period. The Section's role in processing disciplinary cases is set out in a separate report of the Secretary-General on his practice in disciplinary matters and possible criminal behaviour (see A/66/135).

126. It is noted that the new justice system and the concomitant abolition of the Joint Disciplinary Committee have shifted the responsibility for conducting the factual and legal analysis of a case to the Office of Human Resources Management. In the former system, the Secretary-General referred disciplinary matters to the Joint Disciplinary Committee for the establishment of the facts and for advice as to what disciplinary measures, if any, should be imposed. With the abolition of the Joint Disciplinary Committee, the Office of Human Resources Management is required to perform increasingly detailed analyses of the cases before it. Consequently, substantial time is spent scrutinizing every aspect of a referral for disciplinary action, including obtaining clarifications and additional evidence from the investigating entity or the staff member concerned. Depending on the complexity of the matter, the disciplinary process can last from three months in a relatively straightforward case to up to two years in a more complex matter.

Advice

127. Finally, the Administrative Law Section provides ad hoc advice to offices throughout the Secretariat. Generally, one piece of advice requires one working day. Each year, the Section provides approximately 600 pieces of advice.

Resources of the Administrative Law Section

128. The transition to the new system has placed substantial additional demands on the Administrative Law Section. The procedures for both the appeals and disciplinary work are considerably more complex and demanding, resulting in a substantial increase in the volume of work. One fundamental change is the shift from document-based proceedings under the former system to oral hearings and the demand for numerous written submissions under the new system. The average number of working days required to process an appeal has tripled, from 5 days under the former system to 15 days under the new one. Under the former system, the respondent made, on average, two written submissions in each case. Hearings in appeals cases were held rarely, if at all. Under the new system, the Tribunal often requires numerous written submissions. In a significant number of the cases handled by the Section, between two and three oral hearings were held, in some cases even

more. Preparation time for hearings can be substantial, requiring consultation with the offices concerned, and for merits hearings, preparation requires locating and speaking with witnesses in order to familiarize them with the process and to obtain statements.

129. As at 30 June 2009, the Administrative Law Section comprised four posts: one P-5 (Chief) post funded from the regular budget; one P-4 post also funded from the regular budget; and two P-4 posts funded from the peacekeeping support account. In addition, there were ad hoc funds from the peacekeeping support account for general temporary assistance. Owing to the volume of work coming from the field and the demands placed on the Section by the new system, on 1 July 2009 the General Assembly authorized an additional three legal officer posts (2 P-3 and 1 P-2) and two temporary positions (1 P-3 and 1 P-2) financed from the peacekeeping support account. In January 2010, the Section was divided into an Appeals Unit and a Disciplinary Unit. A P-5 post was redeployed from another section within the Human Resources Policy Service to head the Appeals Unit. In view of the sustained workload from the field missions, in July 2010 two additional legal officer posts (1 P-4 and 1 P-3) located in Nairobi were approved by the General Assembly and financed from the peacekeeping support account. Also in July 2010, three additional temporary positions (1 P-4 and 2 P-3) were made available by the Secretary-General under his limited discretionary authority, for handling appeals and disciplinary cases from non-field-related organizational units.

130. The Administrative Law Section has a staffing complement of 15 legal officers. At present, the Section comprises an Appeals Unit with one P-5 (Chief), three P-4 and two P-3 staff in New York and one P-4 and one P-3 in Nairobi; and a Disciplinary Unit with one P-5 (Chief), one P-4, three P-3 and two P-2 staff. Of those positions, three are financed from the regular budget (one of which was redeployed from within the Human Resources Policy Service), nine are financed from the peacekeeping support account and three are financed until 31 December 2011 by temporary resources provided by the Secretary-General under his limited budgetary discretion.

131. An analysis of the Section's caseload demonstrates the need for additional posts. With regard to appeals, over the past year approximately 115 appeals filed with the Dispute Tribunal were received and handled by the Appeals Unit. Each case before the Dispute Tribunal takes on average 15 working days to process. This requires 1,725 working days per year. In addition, the Appeals Unit provides approximately 400 pieces of advice per year, requiring 400 working days per year. In total, the Appeals Unit performs approximately 2,125 days of work per year. Based on 27 working days per month, that is, 78.7 work months per year, this translates to seven posts. The Appeals Unit currently has only five posts, one of which is the post of the Chief. The Chief oversees and directs the work of the Unit, and the four legal officers handle the caseload. Three additional legal officer posts are therefore required.

132. Given that approximately 35 per cent of appeals are from peacekeeping missions and 65 per cent are from non-peacekeeping offices, six posts should be allocated from the regular budget and three from the peacekeeping support account. However, only one legal officer post in the Unit is currently funded from the regular budget. In order to ensure optimal functioning, three additional regular budget posts would need to be established in the Appeals Unit. However, in the light of the

current financial constraints of Member States, it is proposed that two additional posts (1 P-4 and 1 P-3) be established in the Appeals Unit at this time.

133. On the basis of the number of disciplinary cases received since 1 July 2009, it is expected that approximately 150 cases will be received by the Administrative Law Section for action each year. As a disciplinary file takes an average of 20 working days to process, the caseload requires 3,000 working days per year. In addition, the Disciplinary Unit provides approximately 200 pieces of advice per year, requiring 200 working days. In total, the Disciplinary Unit must perform approximately 3,200 days of work per year. Based on 27 working days per month, this translates to 118.5 work months, which is equivalent to 10 posts. The Disciplinary Unit currently has only six legal officer posts, comprising four established legal officer posts and two temporary positions. In addition, the Unit has a Chief (P-5) who oversees and directs the work. Therefore, there is a shortfall of four legal officer posts.

134. Given that approximately 60 per cent of disciplinary cases handled are from peacekeeping missions and 40 per cent are from non-peacekeeping offices, four posts should be allocated from the regular budget and six from the peacekeeping support account. Currently, however, no legal officer post in the Disciplinary Unit is funded by the regular budget. It is proposed that the four established posts be maintained under the peacekeeping support account. The conversion of the two additional required posts from general temporary assistance to established posts will be proposed in the 2012-2013 budget of the peacekeeping support account. In order to handle the workload from non-peacekeeping offices, the Disciplinary Unit requires four regular budget legal officer posts. However, in the light of the current financial constraints of Member States, it is proposed that three additional posts (1 P-4 and 2 P-3) be established in the Disciplinary Unit at this time.

135. In total, the Secretary-General seeks an additional five legal officer posts for the Administrative Law Section. Notably, in the assessment of the resources required for the Section, 27 working days per month were allowed for, rather than the standard 21.5 days. This further demonstrates the heavy workload that the Section is carrying and the need for a sustainable resource base.

United Nations Office at Vienna

136. At the United Nations Office at Vienna and the United Nations Office on Drugs and Crime, overall responsibility for acting as representative of the Secretary-General in appeal and disciplinary matters has been delegated to the Director of the Division for Management. Day-to-day responsibility for handling disciplinary cases prior to their referral to the Office of Human Resources Management and requests for management evaluation, as well as for representing the Secretary-General before the Dispute Tribunal, is assigned to the Human Resources Management Service and coordinated by the Human Resources Policy Officer within the Service.

137. The United Nations Office at Vienna/United Nations Office on Drugs and Crime continues to observe an increase in requests for legal advice and for confirmation of compliance with the applicable law from managers, as well as an increase in the time required to prepare for each case before the Dispute Tribunal. To keep staff and management informed of the features of the new justice system, the United Nations Office at Vienna/United Nations Office on Drugs and Crime continues to hold briefings, lunchtime forums and town hall meetings and sends

electronic messages to staff at large in Vienna and in the field, all of which requires additional time from the human resources team.

138. The increasing number of appeals, coupled with the very short deadlines in the new system, continues to overstretch the legal support capacity available for United Nations Office at Vienna/United Nations Office on Drugs and Crime management. The United Nations Office at Vienna has deployed one Human Resources Policy Officer in the Human Resources Management Service on a full-time basis to respond to the increased demands of the new system. However, this is not viable in the long term, since the human resources team is stretching its limited resources to cover for the regular functions of this officer. Accordingly, the United Nations Office at Vienna requires the dedicated posts of a legal officer at the P-4 level and a General Service (Other level) legal assistant to ensure adequate coverage of the continuing demands of the system. Given the financial constraints, however, it is proposed that the United Nations Office at Vienna be supported by staff at the United Nations Office at Geneva.

United Nations Office at Geneva

139. At the United Nations Office at Geneva, a Human Resources Officer with a legal background acts as the representative of the Organization before the Dispute Tribunal in cases filed by staff members at the Office and in its client organizations (the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Conference on Trade and Development (UNCTAD), the Office for the Coordination of Humanitarian Affairs, the Economic Commission for Europe (ECE) and other, smaller entities). In addition to the temporary P-4 resource, it became necessary to add a P-3 Legal Officer post, funded on a cost-shared basis by client organizations (OHCHR, UNCTAD and the Office for the Coordination of Humanitarian Affairs) in order to cope with the increase in the workload, in particular from the client organizations. However, this arrangement will be in place only until the end of 2011.

140. As noted above, owing to the establishment of the new justice system, staff members' submissions are more detailed and require more analytical work and legal research, and there are more oral hearings than in the prior system, which are time-consuming. In addition, the Dispute Tribunal judges often request the respondent to provide detailed information on elements of a case, thus creating additional work and more consultation with managers involved. The overall result is that each case requires more staff time than a case would have taken in the former system.

141. The legal officers are also requested to provide legal advice to managers regarding management evaluation requests or the preparation of decisions. Furthermore, the United Nations Office at Geneva continues to organize training for managers on the justice system and holds briefings for managers on management evaluation decisions and Tribunal jurisprudence. Finally, the legal officers provide support/input to the Office of Legal Affairs, which handles appeals for the Organization before the Appeals Tribunal.

142. Despite the significant increase in work, no additional resources were allocated to the United Nations Office at Geneva in conjunction with the transition to the new system. While temporary staffing arrangements were made on an ad hoc basis to address the time-critical extra workload relating to the rendering of essential legal expertise to the Office, this was done at the expense of adequately managing

the significant demands placed on other areas of human resources. Those arrangements were therefore determined to be unsustainable for the future.

143. In order to effectively provide proper representation of the Secretary-General before the Dispute Tribunal, it has become crucial to seek advice from Headquarters on the provision of additional dedicated legal resources. Specifically, given the current caseload, the United Nations Office at Geneva requires a P-4 post for a Legal Officer with litigation experience and a General Service (Other level) post for a Legal Assistant. The P-4 Legal Officer would also be required to provide services to the United Nations Office at Vienna/United Nations Office on Drugs and Crime as indicated in paragraph 138 above. The P-3 Legal Officer post, funded on a cost-shared basis by client organizations (OHCHR, UNCTAD and the Office for the Coordination of Humanitarian Affairs), would need to be retained.

United Nations Office at Nairobi

144. During the reporting period, the position of Senior Legal Officer to the Director-General was filled, and for the latter half of the period the Senior Legal Officer represented the United Nations Office at Nairobi before the Dispute Tribunal. Early in the reporting period, the Office had been represented before the Dispute Tribunal by a Human Resources Officer with a legal background, assisted by colleagues from the Administrative Law Section. Furthermore, in the light of the limited experience in litigation of the Human Resources Section, the Office and UNEP engaged outside legal expertise on a consultant contract to assist with litigation matters before the Dispute Tribunal.

145. Cases concerning the client offices of the United Nations Office at Nairobi were handled either by staff of UNEP or UN-Habitat who had a legal background or by the Office's Senior Legal Officer.

146. The reliance placed on the Senior Legal Officer before the justice system means that she is unable to attend to the core functions of her post as legal adviser to the Director-General. Accordingly, additional resources are requested. Specifically, the United Nations Office at Nairobi seeks a P-4 post for a Legal Officer with litigation experience and a post for a General Service (Other level) staff member to serve as a Legal Assistant. These posts would also serve the Economic Commission for Africa (ECA), where the demands of the new system have been particularly acute.

Regional commissions and the Tribunals

147. The respective Human Resources Management Services of the regional commissions (ECE, the Economic and Social Commission for Asia and the Pacific (ESCAP), the Economic Commission for Latin America and the Caribbean (ECLAC), ECA and the Economic and Social Commission for Western Asia (ESCWA)) and the Tribunals (the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda) are called upon to perform additional functions and provide additional services under the new system.

148. The Human Resources Management Services are responsible for the day-to-day handling of disciplinary cases prior to their referral to the Office of Human Resources Management and requests for management evaluations. Furthermore, they are called on to give advice and guidance to managers on the jurisprudence emerging from the Dispute Tribunal. In addition, they liaise with the Administrative

Law Section regarding ongoing cases; respond to requests for additional information sought by the Dispute Tribunal; establish contact with witnesses; and provide information required for the implementation of judgements. The judges of the Dispute Tribunal often request the parties to provide detailed information on elements of a case, thus creating additional work and more consultation with the managers involved. The overall result is that each case requires substantially more staff time than a case would have required in the former system.

149. The original requests for resources to implement the new system did not include any provision for additional resources in the regional commissions. However, following the implementation of the system, it has become apparent that resources are needed.

150. There is a need for a P-4 Human Resources Policy Officer with a legal background to give internal advice to management and Human Resources Services at ESCAP and ESCWA. The Officer would be based in ESCAP and would support both ESCAP and ESCWA. A General Service (Other level) post is also required in order to support the Officer.

151. The legal officers at the United Nations Office at Geneva will support the work of ECE, while the legal officers based at Headquarters will be responsible for advising ECLAC.

152. As indicated in paragraph 146 above, the proposed Legal Officer post in the United Nations Office at Nairobi would support the work of ECA.

Outreach

153. There is a need for outreach to the regional commissions. Training and the dissemination of relevant information to managers and human resource officers are crucial components in maintaining uniform standards across the Organization and addressing ongoing systemic issues. Managers require briefings on the key issues giving rise to appeals and advice on how they may minimize potential disputes. Human resources officers require training on the preparation and presentation of responses to requests for management evaluation and the provision of information and assistance to the Administrative Law Section during the course of proceedings. Finally, managers and human resources officers need to be aware of the overall system, with an emphasis on the possibility of pursuing the informal resolution of disputes. Training on the conduct of negotiations and on effective representation of the Secretary-General in mediations is required.

154. The International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia are currently implementing their completion strategies. Experience demonstrates that the caseload increases when missions are downsizing. Accordingly, it is expected that there will be an increase in the number of cases brought by staff from the Tribunals over the next three years. In this context, it is important that outreach to the Tribunals be facilitated to ensure that managers and human resources officers have the opportunity to receive assistance with specific cases and briefings on the latest developments in the jurisprudence affecting the implementation of their completion strategies.

155. It is proposed that outreach missions be conducted. The sum required to conduct these missions is $30,000. Specifically, it is proposed that a legal officer from Nairobi travel to ECA and the International Criminal Tribunal for Rwanda

($12,500 to the United Nations Office at Nairobi); a legal officer from Geneva travel to ESCWA, ESCAP and the International Tribunal for the Former Yugoslavia ($17,500 to the United Nations Office at Geneva). **Accordingly, the Secretary-General requests $30,000 for outreach missions.**

156. In addition, at times, the Dispute Tribunal conducts hearings in missions and other duty stations. The legal officer representing the Secretary-General is required to travel to the locations where the hearing is conducted. To date, there has been no specific allowance made for these travel costs. **Accordingly, the Secretary-General requests $30,000 for travel to Tribunal hearings in mission locations.**

Summary of current resources and resource requirements

157. **The current resources and the resource requirements of the Administrative Law Section, offices away from headquarters and the regional commissions are set out in the table below.**

Current resources and resource requirements

Office	*Current resources*	*Additional resources sought*
Administrative Law Section	Regular budget 2 P-5 1 P-4 2 General Service Peacekeeping support account 3 P-4 3 P-3 1 P-2 1 P-3 (general temporary assistance)[a] 1 P-2 (general temporary assistance)[a] 1 General Service Limited budgetary authority[b] 1 P-4 2 P-3	Regular budget 2 P-4 3 P-3
United Nations Office at Geneva	P-4 Human Resources Policy Officer	1 P-4 1 General Service (Other level)
United Nations Office at Vienna	No resources (P-4 Human Resources Policy Officer reassigned)	Utilize services of P-4 Legal Officer based in United Nations Office at Geneva
United Nations Office at Nairobi	No resources (P-5 Senior Legal Officer deployed)	1 P-4 1 General Service (Other level)
ECA	No resources	Utilize services of P-4 Legal Officer based in United Nations Office at Nairobi
ESCAP	No resources	1 P-4 1 General Service (Other level)

Office	*Current resources*	*Additional resources sought*
ESCWA	No resources	Utilize services of P-4 Legal Officer based in ESCAP

[a] Conversion to established posts will be proposed in the support account budget for 2012-2013.
[b] Until 31 December 2011.

United Nations Development Programme

158. The UNDP Legal Support Office is an integrated legal office for UNDP and its affiliated funds whose legal work spans all aspects of corporate, institutional and administrative law, with an added focus on policy and training. In the light of the new system of justice, along with an increased demand for legal consultation and advice, the Office has had to adjust its staffing. The Administrative Law Practice Group of the Office is currently operating at full staffing capacity, with one Head of Practice (P-5) who carries her own workload and one P-5, two P-4 and two P-3 Legal Officers, totalling six Legal Officers, who are assisted by two General Service support staff. The Practice Group is responsible for handling all management evaluation requests, all cases before the Dispute Tribunal, all disciplinary cases, legal advice relating to policy work, legal training and all legal queries, on issues ranging from private legal obligations to advice on tax and pension matters.

159. The Legal Support Office is engaged in all stages of both informal and formal resolution of staff grievances. At the informal stage, the Office provides advice and guidance to managers, including the Office of Human Resources, country offices and regional bureaux, on the resolution of differences prior to their maturing into a formal complaint. The Office may also seek the intervention of the Ombudsman for funds and programmes. This preventive work by the Office has increased significantly since 1 July 2009 as more managers seek legal guidance to ensure that their decisions are taken in compliance with the UNDP legal framework, resulting in greater expenditure of time and resources.

160. Where issues are not resolved at the informal stage, the Legal Support Office makes recommendations to the Assistant Administrator and Director of the Bureau of Management on the disposition of requests for management evaluation; represents UNDP before the Dispute Tribunal; participates in mediation proceedings; and coordinates with the Office of Legal Affairs in respect of its representation of the Secretary-General concerning UNDP cases before the Appeals Tribunal. The Office also recommends action from an accountability perspective where warranted. On 1 August 2010, UNDP introduced a new procedure for handling requests for management evaluation. While the Office continues to review such requests and to make recommendations to the Assistant Administrator and Director of the Bureau of Management regarding their disposition, two additional senior managers, appointed by the Administrator and selected from a roster, are requested in order to provide their independent views from a management perspective directly to the Assistant Administrator and Director of the Bureau of Management. This system has worked well, although more managers need to be appointed in 2011 to cope with the increased number of requests for management evaluation. It is anticipated that the ongoing implementation of the one-time review linked to the granting of permanent appointments will generate more cases.

161. The Legal Support Office has provided training courses, briefings and outreach activities on a regular basis and through all available media to raise awareness among UNDP staff members and managers of the new system. For example, the Office launched an online legal course, compulsory for all managers, which contains several chapters on legal issues related to the internal justice system. In addition, the Office has had to adjust to shorter deadlines for management evaluations and from the Dispute Tribunal, as well as to the increased number of hearings and written submissions required by the Tribunal. This has resulted in an overall increase in the workload of its staff. Moreover, in view of the increased focus on oral hearings and full trials at the Dispute Tribunal, specialized training for lawyers in the area of advocacy and litigation has been required.

United Nations Children's Fund

162. The Office of the Principal Adviser to the Executive Director, within the Office of the Executive Director, has overall responsibility for legal support and advice within UNICEF. The Division of Human Resources handles requests for management evaluation and represents UNICEF before the Dispute Tribunal. UNICEF has adjusted staffing levels, competencies and standard operating procedures to accommodate the increased workload resulting from the new system, and special attention is paid to management evaluation requests and to mediation opportunities.

Office of the United Nations High Commissioner for Refugees

163. Prior to the reform of the system of administration of justice, the administrative review of decisions concerning the staff of UNHCR was carried out by the Administrative Law Unit of the Secretariat. At present, UNHCR conducts its own management evaluation, which is delegated to the Deputy High Commissioner. The Legal Affairs Service, reporting directly to the Deputy High Commissioner, provides advice on all management evaluations.

164. UNHCR has had a very positive experience with the management evaluation process, which has enabled management to critically review its decisions, take remedial action before cases escalate to the Dispute Tribunal and review and improve its procedures. In many cases, the process has also re-established dialogue between UNHCR and the staff member.

165. At the Dispute Tribunal, UNHCR is represented by the Director of the Division of Human Resources Management. The Legal Affairs Service advises the Director on all pending cases.

166. At UNHCR, significant emphasis has been placed on the informal resolution of grievances at an early stage, and a number of cases have been resolved informally through the involvement of the UNHCR Ombudsman. Nevertheless, since the introduction of the new system, there has been a noticeable increase in the number of grievances that staff members seek to address through the formal system.

167. UNHCR continues to support the work of the Office of Staff Legal Assistance with the non-reimbursable loan of a Legal Officer to its Geneva office.

United Nations Office for Project Services

168. The United Nations Office for Project Services (UNOPS), being relatively small, has not received many cases. Although it has no legal unit working solely on

such cases, it has a legal officer at its headquarters who is responsible, inter alia, for monitoring developments in the justice system (including the jurisprudence and practices of the Dispute and Appeals Tribunals). Each case filed with the Dispute Tribunal, as well as any issue that may lead to a case, including requests for management evaluations, is managed by the UNOPS legal officer in whose regional office the case or issue arose, supported by the above-mentioned legal officer at headquarters. This work is conducted under the overall supervision of the UNOPS General Counsel. In line with Secretary-General's bulletin ST/SGB/2008/13, the Office of Legal Affairs manages all appeals concerning UNOPS to the Appeals Tribunal.

169. Thus far, the new system seems to be much more formal and professional than the previous system. In the new system, cases are conducted in a manner similar to that employed by many national courts, the increased number of oral hearings being just one example of this.

170. The time required of both lawyers and non-lawyers involved in a case has, accordingly, increased significantly. Furthermore, staff may make requests for the production of a large number of documents. The Dispute Tribunal has generally been inclined to grant such requests, the fulfilment of which requires considerable work on the part of the Organization.

United Nations Population Fund

171. The United Nations Population Fund (UNFPA) employs two legal officers, who provide a range of legal support and advisory services to the Fund, including the representation of UNFPA before the Dispute Tribunal. UNFPA continues to pay special attention to management evaluation, as well as to options involving alternative dispute resolution, including mediation.

2. Legal office representing the Secretary-General before the United Nations Appeals Tribunal

Office of Legal Affairs

172. As the central legal service of the Organization, the Office of Legal Affairs provides legal advice to the Secretary-General, Secretariat departments and offices and United Nations organs in a number of areas, including the new system of administration of justice. Within the Office of Legal Affairs, the organizational unit entrusted with this responsibility is the administration and management cluster in the General Legal Division. The functional responsibilities of the Division in this area are described below.

173. The responsibilities of the General Legal Division in relation to the system of administration of justice pertain to both the informal and the formal stages of dispute resolution. The Division provides advice to offices and departments of the Secretariat and the funds and programmes during the early stages of a claim advanced by a staff member, well before such a claim has progressed to litigation. For example, the Division has been requested to provide input during the management evaluation stage and during settlement negotiations.

174. Once a claim has advanced to the formal stage and a staff member has filed an application with the Dispute Tribunal, the General Legal Division regularly provides advice to the entity representing the Secretary-General at the first level of the

judicial process. Such entities include the Administrative Law Section and its counterparts in Geneva, Vienna and Nairobi. Under the new system of administration of justice, entities within the funds and programmes (UNDP, UNOPS, UNICEF, UNFPA and UNHCR) represent the Secretary-General before the Dispute Tribunal; the Division is available to advise the funds and programmes as requested. In addition, since the Division has a comprehensive view of the evolving jurisprudence of the new system, it briefs all entities representing the Secretary-General before the Dispute Tribunal on legal developments in the new system and shares legal arguments for their guidance and use in relation to issues that arise before the Tribunal. Such advice ensures coordination and consistency in the legal strategies and arguments advanced by the Secretary-General on issues of policy and principle. In that context, the Division brings judgements of the Dispute Tribunal that have significant implications for the Organization to the attention of all the relevant offices.

175. The General Legal Division also represents the Secretary-General before the Appeals Tribunal. This responsibility encompasses both the filing of appeals against judgements of the Dispute Tribunal and responding to appeals filed by staff members. The Division performs this function with respect to all offices and departments of the Secretariat, as well as the funds and programmes. In order to determine whether appealing a given judgement is in the interest of the Organization, the Division must review and analyse each and every Dispute Tribunal judgement and consult with the entities that represented the Secretary-General before the Tribunal. The process of handling an appeal requires research into and analysis of all necessary factual and legal issues raised by the Dispute Tribunal and the preparation of a written appeal or answer, as appropriate.

176. In addition to providing advice on matters related to the system of administration of justice, the General Legal Division provides advice to offices and departments of the Secretariat and the funds and programmes concerning the interpretation or implementation of the Staff Regulations and Rules or other personnel policies and practices before an administrative decision is taken, such as in relation to recommendations for the dismissal of staff members. Although the majority of such requests originate from the Department of Management (including organizational entities such as the Office of Human Resources Management, the Advisory Board on Compensation Claims, the Medical Services Division or the Insurance Section), requests also come to the Division from the funds and programmes, UNHCR and offices away from Headquarters. Finally, the Division is responsible for reviewing, providing advice on and legally clearing every administrative issuance relating to human resources management policy prior to its promulgation.

177. The responsibilities of the General Legal Division in connection with the new system of justice have greatly exceeded expectations and have resulted in an unexpected and substantial increase in the Division's workload. When the Secretary-General submitted his report on the resource requirements for the new system before it became operational, the Advisory Committee on Administrative and Budgetary Questions declined to approve any of the posts that were requested for the Office of Legal Affairs on the assumption that the efforts for the early resolution of disputes through informal means might result in fewer cases being brought to the Tribunals (see A/62/7/Add.7, para. 50). In the light of that consideration, the Advisory Committee found that there was insufficient information to support the requested

additional staff at that time, recommending against the approval of those posts until the real needs could be assessed. The Advisory Committee assumed that the substantial majority of cases would be resolved before they reached the Dispute Tribunal. Contrary to those assumptions, as discussed below, the real needs of the new system have required the provision of legal advice by the General Legal Division to a broader range of clients, on increasingly complex issues, that entail significant financial, legal and operational implications for the Organization, and on an even more urgent basis.

178. Under the previous system, there was one tier of judicial review, the United Nations Administrative Tribunal. At present, there are two tiers of review. Under the previous system, the Administrative Tribunal operated on a part-time basis and met in two sessions per year, while under the new system, the Dispute Tribunal operates on a full-time, year-round basis and the Appeals Tribunal meets in three sessions per year.

179. As a consequence of the fundamental institutional changes in the system, there has been a significant increase in the number of judgements that the General Legal Division must review and provide advice on. Under the previous system, the United Nations Administrative Tribunal issued 65 judgements in 2009. By contrast, under the new system, the Dispute Tribunal issued 218 judgements and the Appeals Tribunal issued 100 judgements in 2010. Thus, the total number of judgements under the new system is approximately five times the number under the previous system.

180. There has also been a significant increase in the number of submissions filed by the General Legal Division under the new system. Under the previous system, the Division filed an average of 63 submissions with the United Nations Administrative Tribunal per year. By contrast, under the new system, it filed 150 submissions with the Appeals Tribunal in 2010 (114 in cases arising from the Secretariat, including peacekeeping missions, and 36 in cases arising from the funds and programmes and UNHCR). Thus, the number of submissions filed under the new system is approximately 140 per cent higher than the number filed under the previous system.

181. The impact of the new system on the General Legal Division is not related solely to the number of appeals filed with the Appeals Tribunal; the nature of the work undertaken by the Division in this area has also substantially changed. Under the previous system, the Division had a generous time frame (six months) for drafting responses to the United Nations Administrative Tribunal. Generally, those responses were based on the well-established jurisprudence of that Tribunal, and the Division's work was thus simpler and more manageable. However, under the new system, the deadlines for filing and responding to appeals have been shortened to 45 days. Moreover, notwithstanding the 45-day deadline established in the statute of the Appeals Tribunal, the Tribunal has shortened the deadline for filing an interlocutory appeal to 15 days. In addition, the introduction of the new system of administration of justice has meant that past practices of the Organization and jurisprudence of the Administrative Tribunal are being re-examined by the new Tribunals. The resulting uncertainty regarding which legal norms and principles should be applied by managers has meant that the Division is now being requested on a more frequent basis to provide advice to other departments, including those entities representing the Organization before the Dispute Tribunal in advance of its regular hearings. This is in contrast to the previous system, in which submissions to the Joint Appeals Board and the Joint Disciplinary Committee were based on the

well-established jurisprudence of the Administrative Tribunal, and it was only rarely that the Division was requested to provide advice in connection with those proceedings.

182. All of these factors are compounded by the recent reforms in many areas of human resources management, such as contractual reform and the harmonization of conditions of service. These reform initiatives have also resulted in greater demands on the General Legal Division with respect to reviewing and providing legal clearance for administrative issuances and providing advice on the interpretation and implementation of the Staff Regulations and Rules.

183. At present, the General Legal Division has two Professional posts (1 P-5 and 1 P-3) and one General Service post funded under the regular budget for administration of justice and management issues. As at 1 July 2010, the Secretary-General had also provided, under his limited budgetary discretion, temporary resources in the form of six P-3/P-4 and two General Service (Other level) posts for a limited period that ends on 31 December 2011. The Division also has one P-4 post funded under the peacekeeping support account. In addition, the Division was recently informed that the General Assembly had approved, as at 1 July 2011, general temporary assistance in the form of one P-4 post and one P-3 post under the peacekeeping support account. In sum, unless additional resources are approved, as requested below, the Division will have a total of only five Professional posts and one General Service post to deal with administration of justice and management issues.

184. Ultimately, the strains placed on the Division as a result of the unforeseen extent of the demand for its services will undermine its overall ability to provide legal advice on a timely basis and in a comprehensive manner not only in the area of administration of justice but also regarding other matters.

185. Ensuring that the Division has the capacity to provide legal advice in the area of administration and management will ensure that there are no adverse long-term financial, legal and operational implications for the Organization as a whole. This is particularly the case during this critical stage of the development of the Tribunals' jurisprudence. For example, the Division's representation of the Organization before the Appeals Tribunal in 2010 contributed to the establishment of parameters for awarding compensation and clarifying the principles for reviewing the Secretary-General's discretionary authority. Not only have those appeals resulted in substantial cost savings for the Organization, but the development of fundamental principles will have significant long-term benefits for the Organization.

186. **In order to meet the substantially increased demand for the services of the Office of Legal Affairs in the new system, the General Legal Division requires eight additional regular budget posts (6 P-3/P-4 and 2 General Service (Other level)) for administration of justice and management issues. However, the Secretary-General is mindful of the current financial constraints of Member States and is therefore seeking the General Assembly's approval at this time of only three additional regular budget posts (2 P-4 and 1 P-3) for the General Legal Division. In this regard, it should be noted that the Division is the only office with a request that reflects a reduction of approximately two thirds compared with the previous report (from eight posts to three), while at the same time, it is the only office that has not received any long-term resources as a consequence of the establishment of the new system (other than the two posts**

under general temporary assistance approved as of 1 July 2011 under the peacekeeping support account).

III. Responses to questions relating to administration of justice

A. Overview

187. The following section responds to the queries set out by the General Assembly in its resolution 65/251.

B. Responses

1. Staff-funded mechanism to support the Office of Staff Legal Assistance

188. The Secretary-General's response to paragraphs 40 and 41 of resolution 65/251, setting out proposals for staff funding mechanisms to support the Office of Staff Legal Assistance, is set out in annex I to the present report.

189. These proposals were the object of consultations with staff at a meeting of the Staff-Management Coordination Committee held in June 2011. At the meeting, staff reiterated their view that none of the options for the staff-funded scheme was acceptable, as the cost of the representation of staff rested with the employer. Staff noted that, as the General Assembly had established the Office of Staff Legal Assistance as part of the Organization's internal system of administration of justice, expenses associated with the operation of the Office constituted an expense of the Organization, and called upon the General Assembly to provide the resources necessary to ensure that both sides (staff and management) were equally armed.

2. Recourse mechanisms for non-staff personnel

190. The Secretary-General's response to the request, made by the General Assembly in paragraph 55 of resolution 65/251, for proposals for resource mechanisms for non-staff personnel is set out in annex II to the present report.

3. Delegation of authority for disciplinary measures

191. The Secretary-General responds below to the request, made by the General Assembly in paragraph 51 of resolution 65/251, for a detailed proposal for the delegation of authority for disciplinary measures.

Background

192. The possibility of delegating the authority to impose disciplinary measures to heads of missions and offices away from Headquarters was initially raised by the Secretary-General at the sixty-second session of the General Assembly. It was based on the recommendations contained in the report of the Redesign Panel, as well as on the results of the twenty-eighth session of the Staff-Management Coordination Committee, at which the issue was discussed and a proposal developed. The Assembly endorsed, in principle, the delegation of authority for disciplinary measures to heads of missions and offices away from Headquarters and requested the Secretary-General to submit a report containing possible options.

193. Taking into account the recommendations of the Committee, the Secretary-General proposed a limited delegation of authority for disciplinary measures, whereby heads of missions and offices away from Headquarters would be given the authority to impose minor sanctions (i.e., censures and fines) once the capacity necessary to do so was in place. The General Assembly requested the Secretary-General to submit a new proposal in that regard at its sixty-fifth session.

194. Given that a number of prerequisites remained unfulfilled, the Secretary-General proposed to put on hold the previous recommendation for limited delegation of authority, pending further analysis. The General Assembly, however, reiterated its request to the Secretary-General to submit, at its sixty-sixth session, a report setting out possible options for the delegation of authority for disciplinary measures. The proposal summarized herein was prepared in connection with that request.

Current status of the handling of disciplinary cases

195. While no significant developments have occurred since the Secretary-General's previous report on administration of justice, a number of observations may be made. The revision of the administrative instruction on revised disciplinary measures and procedures (ST/AI/371/Amend.1) has been initiated by the Office of Human Resources Management. The jurisprudence emerging from the Tribunals indicates that the Staff Regulations and Rules of the United Nations are being analysed and interpreted from a new perspective compared with the jurisprudence from the former United Nations Administrative Tribunal. In particular, the Tribunals are interpreting the procedural and substantive standards required by the Organization throughout the pre-disciplinary and disciplinary phases, for example, the assessment of the allegations and complaints, the quality of the investigation reports, the due-process rights of staff members during the process and the proportionality of measures imposed. It must be noted, however, that the disciplinary cases appealed to the Tribunals relate to cases reviewed by the Office of Human Resources Management on the basis of the jurisprudence and criteria set by the Administrative Tribunal. It therefore remains to be seen how many of the cases received and completed after 1 July 2009, under the new system, will be appealed and how they will be disposed of.

196. From 1 July 2009 to the end of the reporting period, the Administrative Law Section of the Office of Human Resources Management closed 357 cases, of which 216 were mission cases. Of these, 71 were closed with disciplinary measures, as follows: 19 dismissals, 17 separations, 4 demotions, 5 censures with loss of step/grade or deferment, 14 censures with fines, 1 censure with counselling, and 11 censures.

197. The disciplinary cases handled by the Administrative Law Section since 1 July 2009 involving staff members serving in field missions constituted 70 per cent of its caseload in 2009/10 and close to 60 per cent in 2011.

198. The estimated time required by the Administrative Law Section to handle a disciplinary case, from the time of its referral, ranges from 3 to 11 months, depending on the facts and complexity of the case. However, this time estimate reflects optimum conditions and does not take into account the current backlog of older cases, including those that were not completed prior to the introduction of the new justice system, namely (a) 170 cases that were pending with the Office of Human Resources Management prior to the introduction of the new justice system and (b) 30 cases, referred back to the Section, on 1 July 2009, that were pending

before the Joint Disciplinary Committee or pending a decision by the Deputy Secretary-General on a Committee report. It is anticipated that those cases will be completed by the end of 2011.

199. Between 2006 and 2008, it took an average of 17 months to close a disciplinary case. The cases, handled during that period, with the exception of those in which dismissals were recommended, were considered by a Joint Disciplinary Committee panel. The Administrative Law Section took an average of eight months to refer cases to the Committee. Since the introduction of the new system, it has taken the Section an average of 11 months to close cases referred after 1 July 2009.

200. The abolition of the Joint Disciplinary Committee effectively increased the responsibility of the Administrative Law Section for reviewing of the facts of and analysing each case in the light of chapter X of the Staff Rules, on disciplinary measures, which tasks had been formerly carried out in large part by the Committee. In view of the increased scrutiny by the Dispute Tribunal, the Section likewise increased the level of the detail of its analyses, as well as the related follow-up work with investigative entities at every stage of the process.

Review of the range of options

201. The introduction of the new justice system on 1 July 2009 significantly changed the procedures for handling disciplinary cases. Among other things, the abolition of the Joint Disciplinary Committee shifted the responsibility for conducting the factual assessment of a case to the Office of Human Resources Management.

202. There are three critical bottlenecks in the current multistep process, each of which is related to ensuring that the factual analysis is robust and respects the due-process rights of staff members: (a) the length of the investigation process and the number of entities involved in investigations, as well as the quality of fact-finding and other inquiries conducted by non-professional investigators; (b) the time required to obtain comments from staff members charged with misconduct; and (c) the time taken to obtain additional information from the investigating entity.

203. Simply delegating authority would not eliminate existing bottlenecks, as current procedures for handling disciplinary matters and the jurisprudence emerging from the Tribunals would continue to require high levels of scrutiny. Moreover, decentralization to the field might increase duplication of effort and the inconsistency of decisions.

Partial delegation of authority

204. Partial delegation of authority would involve the delegation of authority to impose less serious disciplinary measures (such as fines and censures) to heads of missions and offices away from Headquarters.

205. However, only a limited number of cases result in fines and censures, so this option would not significantly reduce the timeline of the disciplinary process. Therefore, existing bottlenecks would remain unaddressed, while the resulting duplication of effort between the field and the Office of Human Resources Management would introduce inefficiencies. Given the cost increases resulting from the partial delegation of authority, including outposting of Department of

Management legal officers to assist in the procedural aspects of the disciplinary process, the Administration does not consider it to be a viable option at this stage.

Full delegation of authority

206. With full delegation of authority, heads of missions and offices away from Headquarters could impose any disciplinary measure, following the disciplinary process currently employed at Headquarters. While full delegation would increase authority at the field level and reduce communication between the field and Headquarters, the major disadvantage would be the increased likelihood of inconsistent and unequal treatment of staff members across the Organization. Inconsistent decisions would, in turn, increase the number of appeals to the Dispute Tribunal and increase costs. Consequently, the Administration is of the view that it would not be advisable to implement full delegation of authority.

No delegation of authority

207. If the authority to impose disciplinary measures continues to rest exclusively with the Under-Secretary-General for Management, the current, centralized system would continue. Under this scenario, the Department of Management would continue to have a global view of disciplinary cases and would be optimally placed to ensure the most efficient and consistent analysis and disposition thereof.

Proposed short-term measures

208. While neither partial nor full delegation of authority would be optimal at present, it is clear that action is required to address the delays in handling disciplinary cases. Accordingly, the following measures are being proposed in order to expedite the investigation and processing of disciplinary cases:

(a) A pilot project to test the feasibility of decentralizing critical elements of the administration of justice would be implemented, through the establishment of a service base that would cover a cluster of missions. Resources would include legal officers, conduct and discipline officers and access to resources available either at the service base or in the region, such as investigators, the Ombudsman and the Office of Staff Legal Assistance. Each function would have clear terms of reference and reporting lines in order to preserve the independence of investigations, due process for staff members subject to disciplinary procedures and the integrity of the disciplinary process. While the authority to impose disciplinary measures would remain with the Under-Secretary-General for Management, it is expected that placing critical elements of the investigations and disciplinary process closer to the locations where the cases occur would help to shorten the time required to handle them. The pilot would cover certain field missions in Africa (to be identified), and it is proposed that the service base be located in Nairobi. That would allow for the building of an infrastructure that could be used in the future should the experience gained from the pilot support further decentralization, including with respect to offices away from Headquarters located in Nairobi (as well as other offices away from Headquarters);

(b) High-priority cases would be handled through a "fast-track" approach that would involve the prioritization of the case by all offices involved (the Department of Field Support, the Office of Human Resources Management and the Office of Internal Oversight Services (OIOS)). Taking into account requests from

heads of mission and proper justifications, cases identified as high-priority would be processed on an expedited basis, according to guidelines to be developed acknowledging the operational independence of OIOS and its existing procedures, such as the Case Intake Committee, but would otherwise follow applicable procedures for the handling of disciplinary matters;

(c) The authority to place staff on administrative leave with pay would be transferred from the Assistant Secretary-General for Human Resources Management to the Under-Secretary-General for Field Support. This would shorten the process of placing staff on administrative leave with pay. The placement of staff on administrative leave without pay would remain within the authority of the Department of Management;

(d) The establishment of an interdepartmental working group on the delegation of authority with regard to disciplinary matters.

209. The Secretary-General will submit a comprehensive report in this regard to the General Assembly at its sixty-eighth session.

210. The proposed measures were discussed at the thirty-second session of the Staff-Management Coordination Committee. It was agreed that management would share progress reports with staff and would develop a mechanism whereby staff representatives could be briefed periodically on the progress of the project.

Recommendation

211. The General Assembly is requested to endorse the proposals of the Secretary-General detailed in paragraph 208 above.

4. Impact of the new system of administration of justice on staff-management relations

212. With regard to the request made by the General Assembly in paragraph 54 of resolution 65/251, the Secretariat, UNDP and UNICEF believe that it is too early to report on the impact that the new system is having on staff/management relations and on the performance of both staff and managers, and believe that more time is required in order to properly determine if there is any systemic impact. All have noted an evolution in the area of staff-management relations. In particular, managers are becoming increasingly aware of the consequences of their decisions and want to ensure that these are made in accordance with the applicable rules and policies. This has resulted in more queries, requests for advice and guidance from programme managers for the relevant legal offices prior to the taking of decisions. There is also a notable desire on the part of managers to learn more about the system and to generally be able to make the correct decisions in cases.

213. Thus, on a preliminary basis, one may state that the new system of justice is creating an emphasis on the prevention of disputes and, where these cannot be avoided, programme managers are more routinely consulting with the lawyers in order to ensure that their decisions are well informed from a legal and policy standpoint. In the process of either avoiding or informally resolving disputes, extensive and collegial consultations sometimes take place with the representatives of the staff concerned, as well as with the United Nations Ombudsman or the Ombudsman for funds and programmes.

214. While these emerging practices have been identified, it is also clear that not all managers have developed an acute awareness of the requirements of the new system. Thus, from a performance standpoint, more time is required in order to determine whether these emerging practices are coalescing into a trend.

215. It is expected that managers will take staff performance assessment very seriously and provide regular feedback to supervisees in that context, thus ensuring that any decision flowing from an appraisal report is properly documented. However, it is too early to comment on whether this constitutes a trend. It is equally difficult to predict whether staff and managers will positively increase their own performance in the light of the new system.

5. Cost-sharing arrangements

216. With regard to the request made by the General Assembly in paragraph 57 of resolution 65/251, the Secretary-General responds as follows.

217. Since the General Assembly decided, in its resolution 62/228, to establish the new system, the Secretariat has engaged in ongoing formal and informal discussions with representatives of the funds and programmes (UNDP, the United Nations Office for Project Services, UNICEF, UNFPA and UNHCR), with a view to concluding a cost-sharing arrangement based on headcount. Where costs are shared on a headcount basis, they are apportioned according to the number of staff members. On the basis of those discussions, an initial draft memorandum of understanding, prepared by the Secretariat, was circulated to the funds and programmes for their comments. Subsequently, a joint meeting was held among the parties to discuss the issues raised by the funds and programmes. Further to internal deliberations with key stakeholders in the Secretariat, a revised draft memorandum was circulated by the Secretariat to the funds and programmes for additional comments. The revised draft memorandum also included the new United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) as part of the arrangement. In early March 2011, an additional meeting with the parties was held to discuss the revised draft memorandum, pursuant to which, in May, the funds and programmes provided a formal coordinated communication containing a list of pending issues. In June, the Secretariat provided a formal response on all the pending issues, which led to further negotiation among the parties in July. To date, the parties have resolved most of the pending issues, although certain clarifications are still required regarding some elements of the integrated and decentralized Ombudsman function (given that the funds and programmes fund their own Ombudsmen in the integrated office, who report to their executive heads), including mediation services. For example, there are questions concerning structural issues (including accountability and referral mechanisms) between the Ombudsman for funds and programmes and the Regional Ombudsmen as well as the mediation services with regard to cases emanating from staff of the funds and programmes. The parties agreed that once communication lines between the mediation services and the Regional Ombudsmen, on the one hand, and the Ombudsman for funds and programmes, on the other, have been clarified, the discussion on cost-sharing with respect to these remaining, specific aspects can be concluded. The parties are cognizant of the urgency of concluding the cost-sharing arrangement and are committed to doing so as soon as possible.

6. Training of actors in the system

218. With respect to the request made by the General Assembly in paragraph 61 of resolution 65/251, the Secretary-General responds as follows.

219. In June 2009, the incoming judges of the Tribunals participated in an induction course, organized by the Office of Administration of Justice, which provided them with an overview of the structures and regulatory framework of the Organization. Staff of the Registries participated in training courses on court management at the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the European Union Civil Service Tribunal. Staff of the Office of Staff Legal Assistance participated in advocacy training courses conducted by staff of the International Tribunal for the Former Yugoslavia and practitioners of the defence bar in The Hague.

220. The Department of Management engaged a legal consultant who coached legal officers of the Administrative Law Section on drafting techniques. The legal officers also participated in an intensive week-long advocacy training course organized by a national legal training institute. In addition, they participated in a dispute resolution training course organized by UNDP and the Ombudsman.

221. UNDP organized an advocacy training programme for its legal officers appearing before the Tribunals, conducted by very experienced staff of the International Tribunal for the Former Yugoslavia and senior members of the United Kingdom bar. Because such training is of paramount importance for legal officers in the new, professionalized formal system, a similar training course is envisaged for later in 2011. UNDP and the Office of the United Nations Ombudsman and Mediation Services jointly organized a workplace dispute resolution training programme, which was attended by more than 100 staff members, including senior officials.

222. Regular participation in training programmes aimed at the enhancement of legal education is required for all participants in the system, including judges, their staff and the legal officers representing staff and management. Legal officers require periodic training in oral and written advocacy to maintain and enhance their skills. Staff of the Registries of the Dispute Tribunal and the Appeals Tribunal would benefit from enhanced training on court management practices, including educational exchanges with staff of other international tribunals. Additionally, benefits are to be gained from joint training of the various actors in the system, both in terms of cost savings and because of the opportunity to share views and best practices.

223. It would be beneficial for judges to attend legal conferences and colloquia at which the judges of other international tribunals, high-level scholars and other participants engage in discussions on law and judicial practice related to their professional activities. Currently, the budget of the Office of Administration of Justice is insufficient to permit this.

224. The creation of a judicial library of reference books at each Tribunal location would enhance the education of judges and staff. Furthermore, it would be beneficial to provide for ongoing judicial education through an annual plenary education conference, which would include inputs from outside presenters and facilitators as appropriate. Topics to be explored could include cross-cultural communication skills, updates on the development of the law of the international civil service, the application of international norms, the application of ILO

Conventions to the law of the international civil service, and comparative approaches to legal issues.

225. Finally, it may be appropriate to consider additional judicial training for judges in the legal frameworks of the various United Nations agencies and bodies whose staff have access to the United Nations system of administration of justice. Furthermore, in order to ensure that there is dialogue among the judiciaries of international tribunals, it may be advisable to organize a United Nations joint judicial seminar for the judges of both the Dispute Tribunal and the Appeals Tribunal, as well as judges of other tribunals and, perhaps, legal academics, focusing on issues of international administrative law. In addition, the training of all participants is required in order to promote greater uniformity and consistency across the Tribunals in terms of the standards applied.

226. After two years of operation of the current system, there continues to be a need to provide outreach to staff on the informal and formal means of dispute resolution and, in particular, on the interrelationship between the two. The Office of Administration of Justice has produced a user-friendly handbook, in all official United Nations languages, to assist staff. It has also set up a comprehensive website in all official languages that includes descriptions of all the elements of the formal system, including a dedicated web presence for the Office of Staff Legal Assistance and an up-to-date database of the jurisprudence of the Tribunals.

227. Training requirements relating specifically to informal dispute resolution and mediation will be presented in the context of the report of the United Nations Ombudsman on the informal system of justice.

7. The timeliness of the handling of disciplinary cases

228. In resolution 65/251, the General Assembly endorsed the recommendations made by the Advisory Committee on Administrative and Budgetary Questions in its report on the administration of justice at the United Nations (A/65/557), which included a request that the Secretary-General include information on the timeliness of the handling of disciplinary cases in his report on the administration of justice to be submitted to the Assembly at its sixty-sixth session.

229. The response to that request has been agglomerated with the response to the request for proposals on the delegation of disciplinary authority contained in paragraphs 191 to 210 above.

8. Information requested by the General Assembly in paragraph 53 of resolution 65/251

230. In paragraph 53 of resolution 65/251, the General Assembly requested the Secretary-General to include, in his report on the administration of justice to be submitted to the Assembly at its sixty-sixth session, the following information:

(a) Clear statistics on the cases received and disposed of during the period by both Tribunals, including information, by category, on whether the judgements rendered found for the applicant or for the respondent and on the administrative issues involved;

(b) Analysis of trends over a number of reporting periods in order to identify systemic issues leading to usage of the system of justice and to monitor whether they are being effectively addressed over time;

(c) Detailed information on monetary compensation awarded and indirect costs associated with an appeal, for example, in staff time, including identification of those aspects of staff administration that give rise to large numbers of appeals;

(d) Detailed information on payments of compensation to staff equal to six months of salary or more, with an indication of the offices or departments concerned, the location of these offices or departments and some details of the facts of the case.

231. With respect to paragraph 53 (a) of resolution 65/251, the Secretary-General has provided this information in paragraphs 30-41 and 65-72 above, relating to the work of the Dispute Tribunal and the Appeals Tribunal. Additional information is provided in annex III to the present report.

232. With respect to paragraph 53 (b) of resolution 65/251, the Secretary-General provides the following response

233. The statistics reveal that across the Organization, the most frequently disputed decisions are those on issues related to selections and appointments. Claims related to such decisions constitute around 40 per cent of all claims submitted. There are various reasons for this. First, there was ambiguity in the former administrative instruction on the staff selection system with regard to priority rights for internal candidates. Second, there are a number of procedures that, in accordance with the administrative issuances, need to be followed when a position is being filled: the recruitment/selection process provides scope for allegations of procedural error. Third, staff members who are not selected for positions frequently allege that this is due to extraneous considerations. Fourth, staff members have alleged that there is a conflict between their e-PAS assessments and the evaluation of their candidacies for vacancies, and thus that the assessment of their candidacy was unfair. Finally, there is inconsistent jurisprudence from the Dispute Tribunal with regard to the breadth of the discretion vested in the Administration in selection exercises as well as the burden and standard of proof in challenges to such exercises.

234. These issues have been addressed by the Administration as follows:

(a) In September 2009, as soon as the ambiguity in the provisions regarding priority consideration had been identified, the Assistant Secretary-General for Human Resources Management sent a circular to all offices clarifying the procedure for the consideration of internal candidates;

(b) In April 2010, the administrative instruction on the staff selection system was abolished and was replaced with a new administrative instruction (ST/AI/2010/3). The provisions on priority consideration are no longer part of the policy;

(c) In October 2010, a "lessons-learned guide", providing guidance on the staff selection process, was issued by the Under-Secretary-General for Management;

(d) Inconsistent decisions of the Dispute Tribunal have been appealed by the Administration. Jurisprudence from the Appeals Tribunal handed down in March 2011 provides greater clarity with regard to the breadth of the discretion of the Secretary-General in selection decisions and the burden and standards of proof;

(e) The jurisprudence of the Appeals Tribunal will assist in responding to factual arguments made by staff members concerning any perceived inconsistency between performance evaluations and candidacy evaluations; it will also assist in addressing allegations of bias. The Appeals Tribunal has found that when staff members make such allegations, the onus is on them to produce clear and convincing evidence to support their claims.

235. As regards the other categories of cases, it has been recognized that non-renewal decisions are frequently impugned on the basis that the procedures mandated under the performance management system have not been followed. The Under-Secretary-General for Management has addressed this issue in circulars to management detailing the jurisprudence of the Dispute Tribunal and impressing on managers the need to follow e-PAS procedures.

236. A "lessons-learned guide" focusing on the non-renewal of fixed-term appointments was issued in August 2010. The guide instructs managers on strictly adhering to rules and procedures, documenting the decision-making process and adhering to performance management procedures.

237. In addition, on 30 April 2010, an administrative instruction entitled "Performance Management and Development System" (ST/AI/2010/5) was issued. This issuance updates the policies and procedures for performance evaluation and addresses issues that have led to delay in the completion of e-PAS appraisals.

238. Disciplinary measures are also frequently appealed. This is another area in which the jurisprudence arising from the Dispute Tribunal continues to evolve. Specifically, on a number of occasions the Dispute Tribunal has reconsidered the exercise of the Secretary-General's discretion. The Administration has appealed those decisions. In early 2011, the Appeals Tribunal issued a judgement emphasizing that the Dispute Tribunal was not the decision maker and that its role was limited to the judicial review of the exercise by the Secretary-General of his broad administrative discretion.

239. One measure that has been the subject of a number of judgements is the placement of staff members on special leave with full pay in the context of an ongoing investigation into allegations of misconduct. The Dispute Tribunal ruled that this measure was not suitable where disciplinary proceedings were pending. As a result, the Administration has revised the rule, enacting staff rule 10.4, which specifically provides for the placement of a staff member on administrative leave pending an investigation. Whereas the former staff rule required that a staff member be charged prior to being suspended from duty, the new staff rule provides that a staff member may be placed on administrative leave at any time pending an investigation until the completion of the disciplinary process.

240. A significant subject matter of appeals of judgements to the Appeals Tribunal has been the awarding of compensation. A number of substantial awards have been overturned by the Appeals Tribunal, and principles to be applied by the Dispute Tribunal have been enunciated. Specifically, the Appeals Tribunal has found that successful claimants are entitled to be compensated in a sum that, as far as money can do so, places them in the same position as they would have been in had their terms of appointment been observed.

241. With respect to paragraph 53 (c) of resolution 65/251, detailed information on monetary compensation awarded is provided in annex III to the present report. As

regards the indirect costs associated with an appeal, such as staff time, including the identification of those aspects of staff administration that give rise to large numbers of appeals, the Secretary-General responds as follows.

242. In order to calculate such indirect costs, it was agreed by all stakeholders of the system of administration of justice that the total number of hours spent by staff in relation to judgements rendered in 2010 by the Dispute Tribunal and the Appeals Tribunal would be added up. It was also agreed that the cost of a P-4 legal officer working 40 hours a week, 45 weeks per year, would be used as an average. An additional 20 per cent would be added to reflect the additional staff hours spent by management and senior management in reviewing cases, as well as administrative support.

243. Submissions calculating the time spent on cases in which the Dispute Tribunal had rendered judgements were received from the Dispute Tribunal Registries, the Office of Legal Affairs, the Office of Human Resources Management, UNDP, UNICEF, the United Nations Office for Project Services, UNFPA, the Management Evaluation Unit and the Office of Staff Legal Assistance. Submissions calculating the time spent on the Appeals Tribunal cases were provided by the Appeals Tribunal Registry, the Office of Legal Affairs and the Office of Staff Legal Assistance. Averages for Dispute Tribunal and Appeals Tribunal cases are provided separately below. The methodology by which these figures were obtained can be made available upon request.

244. It should be noted that the number of hours spent on individual cases may vary widely. In addition, the numbers provided by the Office of Staff Legal Assistance do not reflect time spent on cases by volunteers, nor do they reflect the large amount of time spent by the Office providing summary advice or working on cases that do not result in a formal appeal.

245. Taking into account the information provided by each of the various offices and entities, the average staff time spent on a Dispute Tribunal case is 400.3 hours, and on an Appeals Tribunal case, 230.5 hours (calculated on the basis of a P-4 staff member working 40 hours a week, 45 weeks per year).

246. With respect to paragraph 53 (d) of resolution 65/251, relating to payments of compensation of six months or more, the Secretary-General provides information on such payments in annex III to the present report.

IV. Issues relevant to the review by the General Assembly of the statutes of the Tribunals

A. Introduction

247. In paragraph 46 of its resolution 65/251, the General Assembly decided to "defer until its sixty-sixth session a review of the statutes of the Tribunals, in the light of experience gained, including on the efficiency of the overall functioning of the Tribunals". In order to assist the Assembly with its review of the statutes of the Tribunals, the Secretary-General raises the following issues for the consideration of the Assembly. In raising these issues, the Secretary-General emphasizes that the discussion of them is without prejudice to the principle of judicial independence. As the Assembly is the body that established the Tribunals, adopted their statutes and

approved their rules of procedure, it is for the Assembly to determine what action, if any, should be taken in relation to these issues.

B. Rules of procedure of the Tribunals

248. Article 7 of the statute of the Dispute Tribunal provides that the Dispute Tribunal shall establish its own rules of procedure, which are subject to approval by the General Assembly. Similarly, article 6 of the statute of the Appeals Tribunal provides that the Appeals Tribunal shall establish its own rules of procedure, which are subject to approval by the Assembly. As the Assembly will be considering the report on amendments to the rules of procedure of the Dispute Tribunal and the Appeals Tribunal (A/66/86), the Secretary-General submits to the Assembly for its consideration the following observations related to the rules of procedure.

1. Consultation for the amendment of the rules of procedure

249. The statutes of the Tribunals do not currently provide for the parties to recommend or to be consulted on amendments to the rules of procedure of the Dispute Tribunal and the Appeals Tribunal. As the parties that appear before the Tribunals would provide an important perspective regarding the impact of the proposed amendments, prior consultation with the parties would benefit the process of amending the rules of procedure of the Tribunals. The absence of an express provision in their statutes or in the rules of procedure does not prevent the Tribunals from undertaking consultation with the parties prior to amending their rules of procedure. Notably, while the statute and the rules of procedure of the International Tribunal for the Former Yugoslavia do not provide for a consultative process for the amendment of the rules of procedure, in practice, representatives of the Registry, the Office of the Prosecutor and defence counsel participate in a "rules committee" that has been established to consider proposed amendments of the Tribunal's rules of procedure before those amendments are adopted by the judges.

250. **The Secretary-General recommends that the General Assembly encourage the Tribunals to consult with the parties appearing before them when making amendments to their rules of procedure.**

2. Dismissal of manifestly inadmissible or unfounded cases

251. Article 9 of the rules of procedure of the Dispute Tribunal states, "A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law". Under this provision, a non-meritorious claim cannot be dismissed so long as there is a dispute as to the material facts. By contrast, the administrative tribunals of other intergovernmental organizations provide for mechanisms to address non-meritorious claims.[7] For example, article 76 of the rules of procedure of the European Union Civil Service Tribunal states that "where the action is, in whole or in part, manifestly inadmissible

[7] See rule 7 (11) of the rules of procedure of the Administrative Tribunal of the World Bank (providing for the summary dismissal of cases that are considered to be "clearly irreceivable or devoid of merit") and article VIII of the statute of the Administrative Tribunal of the Organization of American States (allowing the dismissal of a claim "based on lack of jurisdiction ..., failure to satisfy the requirements of admissibility, or failure to make a claim upon which relief can be granted").

or manifestly lacking any foundation in law, the Tribunal may, without taking further steps in the proceedings, give a decision by way of reasoned order". In 2010, 10 of the 129 cases before the European Union Civil Service Tribunal were resolved on the basis of that provision.

252. Furthermore, the Secretary-General notes that the rules of procedure of the Appeals Tribunal do not provide for any mechanism to address non-meritorious appeals expeditiously. Of the other intergovernmental organizations with administrative tribunals, only the European Union provides for appellate review. Judgements of the European Union Civil Service Tribunal may be appealed to the General Court. Article 111 of the rules of procedure of the General Court states that where an action is "manifestly inadmissible or manifestly lacking any foundation in law", the General Court may decide on an action "without taking further steps in the proceedings".

253. Regarding the types of cases that may be dismissed on the grounds that they are manifestly inadmissible or unfounded, the Secretary-General recalls that the Appeals Tribunal ruled as early as in July 2010 that the Dispute Tribunal did not have the authority to review or revise judgements of the former United Nations Administrative Tribunal.[8] Nevertheless, to date, the Appeals Tribunal has received at least five appeals seeking revision of judgements by the Administrative Tribunal. Although these submissions may be appropriately considered to be "manifestly lacking any foundation in law", the Appeals Tribunal has no mechanism to dismiss such cases expeditiously. Consequently, the Organization bears the costs of issuing a full judgement for each of these cases ($3,600 per judgement), in addition to the costs incurred by the Organization in preparing the responses to such appeals.

254. In order to ensure that frivolous cases can be dismissed expeditiously so that the resources of the system of administration of justice can be used more efficiently, the General Assembly may consider amending article 7.2 (h) of the statute of the Dispute Tribunal so that its rules of procedure will include a provision concerning "procedures for the summary dismissal of cases, including cases that are manifestly inadmissible or manifestly lacking any foundation in law". The Assembly may also consider amending article 6 of the statute of the Appeals Tribunal so that its rules of procedure will include a similar provision.

255. **The Secretary-General recommends that the General Assembly amend article 7.2 (h) of the statute of the United Nations Dispute Tribunal and article 6 of the statute of the United Nations Appeals Tribunal to provide for a mechanism in their rules of procedure to dismiss expeditiously cases that are manifestly inadmissible or manifestly lacking any foundation in law.**

3. Audio recording of oral hearings

256. As indicated in paragraph 49 above, the Secretary-General has requested budgetary resources to permit the audio recordings of oral hearings to be maintained. While the Appeals Tribunal has ruled in one case that a party is "entitled to the record of the testimonies made at those proceedings from the relevant Dispute Tribunal Registry",[9] such records have not always been made available to the parties upon request. In June 2011, the parties were informed that

[8] United Nations Appeals Tribunal judgement No. 2010-UNAT-57 (*Fagundes*).

[9] United Nations Appeals Tribunal order No. 49 (2011) (*Finniss*).

the "Registries of the Dispute Tribunal are not required under the statute and rules of procedure to make audio recordings of oral proceedings".

257. The Secretary-General notes that, in cases where the Dispute Tribunal's assessment of the facts is based extensively or exclusively on the oral evidence presented during the proceedings, and the Dispute Tribunal fails to provide the parties with a record of such oral evidence, the parties are unable to exercise their right to appeal in any meaningful manner. While the parties may rely on their own notes of the oral evidence, the Appeals Tribunal will be unable to make an assessment as to whether the Dispute Tribunal's account of the oral evidence or the parties' account is accurate if there is no objective record of that evidence.

258. In order to ensure that audio recordings of oral hearings are maintained and made available to the parties upon request, the General Assembly may consider amending article 7.2 (e) of the statute of the Dispute Tribunal so that its rules of procedure will include a provision concerning "oral hearings, including the audio recordings of oral hearings, which shall be made available to the parties upon request".

259. **The Secretary-General recommends that the General Assembly revise article 7.2 (e) of the statute of the United Nations Dispute Tribunal to provide that audio recordings of oral hearings before the Tribunal are to be maintained and made available to the parties upon request.**

4. Redaction of names of staff members

260. Article 11.6 of the statute of the Dispute Tribunal provides that the "judgements of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal".

261. The Secretary-General notes that in a number of cases, staff members either directly or indirectly involved in a contested decision have been identified by name by the Dispute Tribunal in the judgements. In some cases, in which the contested decision has been determined by the Dispute Tribunal to be vitiated, the actions and character of such staff members have been described by the Tribunal in intemperate terms. The identification of staff members by name and the description of their actions and characters in intemperate terms in Dispute Tribunal judgements have led some staff members to file complaints against the judges and raise concerns about defamation.

262. In view of article 11.6 of the statute of the Dispute Tribunal and the need to ensure that the names and character of staff members are not unfairly impugned in Dispute Tribunal judgements, the General Assembly may consider amending article 7.2 (f) of the statute of the Tribunal so that its rules of procedure will include a provision concerning "publication of judgements, including a procedure for the redaction of names from judgements upon the request of the individuals concerned".

263. **The Secretary-General recommends that the General Assembly amend article 7.2 (f) of the statute of the United Nations Dispute Tribunal so that its rules of procedure will include a provision concerning "publication of judgements, including a procedure for the redaction of names from judgements upon the request of the individuals concerned".**

5. Suspensory effect of appeals of interlocutory orders

264. Pursuant to article 11.3 of the statute of the Dispute Tribunal, judgements are "executable following the expiry of the time provided for appeal". Moreover, article 7.5 of the statute of the Appeals Tribunal provides that the "filing of appeals shall have the effect of suspending the execution of the judgement contested". Although the statutes of the two Tribunals refer only to the appeal of judgements, the Appeals Tribunal has recognized that in limited circumstances, appeals of interlocutory orders are also permissible. Therefore, it would seem appropriate for article 11.3 of the Dispute Tribunal statute and article 7.5 of the Appeals Tribunal statute to apply to appeals of interlocutory orders.

265. A lack of clarity regarding whether an appeal suspends the obligation to execute a contested interlocutory order has led the Dispute Tribunal to prohibit the appealing party from appearing before it, an outcome that was subsequently nullified by the Appeals Tribunal.[10] The authority to impose such a prohibition is now codified in the amended article 19 of the Dispute Tribunal's rules of procedure, which allows the Tribunal to issue any order that it considers appropriate, "including a decision dismissing the application or response", where a party fails to comply with an interlocutory order. The Secretary-General believes that the right of the Dispute Tribunal to enforce compliance with interlocutory orders must be balanced against the right of the parties to appeal interlocutory orders in good faith, particularly in cases in which the Secretary-General would otherwise be required to execute an interlocutory order issued by the Dispute Tribunal that contradicts the established jurisprudence of the Appeals Tribunal. The General Assembly may consider amending article 11.5 of the Dispute Tribunal statute and article 7.5 of the Appeals Tribunal statute to confirm that these provisions apply equally to all decisions issued by the Dispute Tribunal, whether in the form of judgements or orders.

266. **The Secretary-General recommends that the General Assembly amend article 11.3 of the statute of the United Nations Dispute Tribunal to clarify that the interlocutory orders issued by the Tribunal may be subject to appeal. The Secretary-General also recommends that the Assembly amend article 7.5 of the statute of the United Nations Appeals Tribunal to clarify that appealing an interlocutory order issued by the Dispute Tribunal shall have the effect of suspending the execution of the contested order. The related provisions of the rules of procedure of the Tribunals would also need to be amended.**

6. Deadlines for filing appeals with the Appeals Tribunal

267. Article 7.1 (c) of the statute of the Appeals Tribunal establishes a 45-day deadline for filing appeals.[11] There are currently no deadlines set out in the statute for appealing interlocutory orders, although in practice the Appeals Tribunal has imposed a 15-day deadline.[12]

268. In view of the limited resources of the parties and the delays encountered in transferring relevant files between duty stations, the Secretary-General considers

[10] United Nations Appeals Tribunal judgement No. 2011-UNAT-121 (*Bertucci*).

[11] The Secretary-General notes that the deadline for appealing judgements of the European Union Civil Service Tribunal is two months (see statute of the Court of Justice of the European Union, annex I).

[12] United Nations Appeals Tribunal judgement No. 2010-UNAT-62 (*Bertucci*).

that extending the deadline for filing appeals by an additional 15 days would facilitate a fuller briefing on the legal issues to be examined by the Appeals Tribunal. The minimal delay occasioned by extending the deadline by an additional 15 days should be weighed against the significant gains that would result from allowing for a more thorough examination of the legal issues raised in the appeals, particularly during this initial period of the Appeals Tribunal, when many fundamental issues are being examined for the first time.

269. **The Secretary-General recommends that the General Assembly amend article 7.1 (c) of the statute of the United Nations Appeals Tribunal to extend the deadline for filing appeals of United Nations Dispute Tribunal judgements from 45 days to 60 days and to establish a 30-day deadline for filing appeals of interlocutory orders. The related provisions of the rules of procedure of the Appeals Tribunal would also need to be amended.**

C. Jurisdiction of the United Nations Dispute Tribunal over acts and omissions by independent entities in connection with the performance of their operational mandates

270. Article 2.1 (a) of the statute of the Dispute Tribunal establishes the Tribunal's jurisdiction over an "administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". In interpreting the term "administrative decision", the United Nations Administrative Tribunal held that "administrative decisions are characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences" for the terms and conditions of employment of the staff member.[13] Elaborating on the first criterion (that administrative decisions must be taken by the Administration), the Administrative Tribunal held, in its judgement No. 1359, *Perez-Soto* (2007), that a decision made by the Ombudsman not to investigate a harassment complaint did not constitute an administrative decision, since any acts or omissions on the part of the Ombudsman could not be attributed to the Administration in view of the Ombudsman's independent status.

271. The administrative tribunals of other international organizations have also recognized the basic principle that when an entity acts independently from management, the organization does not have effective control over the entity and therefore cannot be held liable for its acts or omissions. For example, there have been two separate cases in which staff members of the International Monetary Fund (IMF) and the World Bank have alleged that the staff associations of their organizations were responsible for publishing confidential personnel information and filed claims against those organizations.[14] Both the IMF Administrative Tribunal and the World Bank Administrative Tribunal dismissed those claims, ruling that the organizations could not be held liable for actions of the staff associations, which did not act "at the instruction of management or under the effective control of management".[15]

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[13] United Nations Administrative Tribunal judgement No. 1157, *Andronov* (2003), para. V.

[14] International Monetary Fund Administrative Tribunal judgement No. 1999-2 (*Mr. "V" v. International Monetary Fund*), paras. 104-114.

[15] World Bank Administrative Tribunal decision No. 384, (*AA v. IBRD*) (2008), paras. 49-50.

272. The Secretary-General notes that a number of entities with an independent status have been established pursuant to General Assembly resolutions. These entities include the Ombudsman, OIOS, the Ethics Office and the Office of Administration of Justice, all of which enjoy operational independence.[16] The issue of the competence of the Dispute Tribunal over acts or omissions by these independent entities raises difficult questions, as does the possibility of holding the Secretary-General liable for acts and omissions by entities over which he has no effective control.

273. To date, the independent entities whose acts and omissions have been challenged before the Dispute Tribunal include: (a) OIOS; (b) the Ethics Office; and (c) the Office of Staff Legal Assistance:

(a) In a recent case examined by the Appeals Tribunal, a staff member challenged the content of an OIOS report and the procedures employed by the Office in conducting its audit. As at 15 August 2011, the judgement of the Appeals Tribunal in that case had not been issued. However, as indicated in a synopsis of the judgement (which was issued by the Appeals Tribunal Registry not as an official document, but for public information purposes), the Tribunal appears to recognize that, as the Secretary-General has no power to influence or interfere with OIOS, the United Nations Dispute Tribunal also has no jurisdiction to do so, as it can only review the Secretary-General's administrative decisions;

(b) In at least three cases, staff members have filed applications with the Dispute Tribunal challenging a determination made by the Ethics Office that they were not subject to retaliation. In rejecting the argument that the General Assembly's request that the Secretary-General create an Ethics Office with an "independent status" required the Secretary-General to respect that status, the Dispute Tribunal opined that "recommendations of the General Assembly must be given serious consideration" but are not dispositive for assessing whether the Ethics Office enjoys an independent status.[17] As the Dispute Tribunal has not yet issued a final judgement addressing the issue of whether a determination made by the Ethics Office regarding retaliation constitutes an administrative decision, the Appeals Tribunal has not yet pronounced itself on that issue;

(c) In a recent case examined by the Appeals Tribunal, a staff member challenged the alleged failure of the Office of Staff Legal Assistance to disclose a conflict of interest. The Secretary-General maintained that acts and omissions of the Office did not constitute decisions by the Administration and, as such, fell outside the scope of the jurisdiction of the Dispute Tribunal, which was limited to reviewing "administrative decisions". In that connection, the Secretary-General noted that the IMF Administrative Tribunal and the World Bank Administrative Tribunal had rejected the argument that the respective international organizations could be held liable for the contested acts by the staff associations, since the primary purpose of staff associations was to advocate on behalf of staff interests and to "express viewpoints independent from, and sometimes in opposition to ... management".[18] This reasoning would apply with even greater force to the Office of Staff Legal Assistance, given that the adversarial nature of litigation means that the Office often

[16] General Assembly resolutions 48/218 B (on OIOS), 60/1 (on the Ethics Office) and 62/228 (on the Office of Staff Legal Assistance).

[17] United Nations Dispute Tribunal order No. 19 (NY/2010), para. 23.

[18] World Bank Administrative Tribunal decision No. 384 (*AA v. IBRD*) (2008), paras. 49-50.

expresses viewpoints in opposition to management. As at 15 August 2011, the judgement of the Appeals Tribunal in that case had not been issued. However, as indicated in a synopsis of the judgement, the Appeals Tribunal appears to have ruled that acts and omissions of the Office of Staff Legal Assistance fall within the jurisdiction of the Dispute Tribunal, as the services provided by the Office and the manner in which the representation is implemented can have an impact on the terms of appointment. The implication of holding the Secretary-General legally and financially liable for acts and omissions of the Office of Staff Legal Assistance would be that if staff members are unable to prevail in their challenges of administrative decisions taken by the Secretary-General, they may nevertheless claim compensation from the Organization if they are able to establish that the legal advice provided by the Office was somehow deficient.

274. The jurisprudence emerging from the Appeals Tribunal appears to indicate that, while the acts and omissions of certain independent entities such as OIOS may fall outside the scope of the jurisdiction of the Dispute Tribunal, the acts and omissions of other independent entities such as the Office of Staff Legal Assistance may be reviewed by the Dispute Tribunal. Furthermore, the Secretary-General notes that any guidance of the Appeals Tribunal on these issues may not necessarily be dispositive, as the Dispute Tribunal has emphasized that it will consider rules established by the Appeals Tribunal to be applicable only where they are "in conformity with general principles of law".[19]

275. Accordingly, the Secretary-General considers that it may be helpful for the General Assembly to clarify its intent regarding the scope of the jurisdiction of the Dispute Tribunal. In that connection, the Secretary-General emphasizes that excluding the acts and omissions of independent entities from the jurisdiction of the Dispute Tribunal would not mean that staff members would be deprived of recourse where they believed that their rights had been violated by such entities.

276. First, in a situation in which the Secretary-General takes an administrative decision based on an impugned act or omission by an independent entity, the decision itself can be challenged before the Dispute Tribunal. For example, if the Ethics Office determines that a staff member engaged in retaliation and the Secretary-General decides to impose a disciplinary measure against the staff member on the basis of the determination made by the Ethics Office, the staff member could then file an application with the Dispute Tribunal challenging the Secretary-General's imposition of the disciplinary measure and his reliance on an allegedly faulty determination by the Ethics Office. However, a determination by the Ethics Office regarding retaliation should not be subject to challenge before the Dispute Tribunal. As the independent status of the Ethics Office prevents the Secretary-General from instructing the Office how to make its determination of retaliation, the Secretary-General cannot be held liable for determinations made by the Office, even if they subsequently prove to be flawed.

277. Secondly, where a staff member challenges an act or omission by an independent entity related to the performance of its managerial functions, the extension of the jurisdiction of the Dispute Tribunal over such matters would not raise any problems in terms of the entity's independent status. For example, an

[19] United Nations Dispute Tribunal order No. 010 (NBI/2011) (*Abbaszadeh*), para. 60.

application challenging the manner in which a selection process in OIOS had been conducted would clearly fall within the Dispute Tribunal's jurisdiction.

278. The exercise of the jurisdiction of the Dispute Tribunal over acts and omissions of independent entities is problematic only where a staff member's claims relate to the manner in which such entities carry out their operational responsibilities. As the manner in which independent entities carry out their operational responsibilities lies outside the effective control of the Secretary-General, the Secretary-General is of the view that any acts and omissions by the independent entities in relation to their operational mandates cannot be attributed to him, and that he should not be held legally or financially liable for them. Indeed, the imposition of liability under these circumstances will not advance the goal of strengthening accountability, as the Secretary-General has no authority to influence or correct the acts and omissions by the independent entities challenged by the staff members. The General Assembly may wish to consider the appropriateness of imposing financial liability and expending the public funds of the Organization where no fault on the part of the Secretary-General has been established.

279. Should the General Assembly wish to clarify that the scope of the jurisdiction of the Dispute Tribunal over administrative decisions is limited to those decisions that have been taken by or on behalf of the Secretary-General, it may consider amending article 2.1 (a) of the Dispute Tribunal's statute to refer to "an administrative decision unilaterally taken by or on behalf of the Secretary-General that is alleged to be in non-compliance with the terms of appointment or the contract of employment".

280. **The Secretary-General recommends that the General Assembly amend article 2.1 (a) of the statute of the United Nations Dispute Tribunal to refer to "an administrative decision unilaterally taken by or on behalf of the Secretary-General that is alleged to be in non-compliance with the terms of appointment or the contract of employment".**

281. Another emerging issue is whether the Dispute Tribunal has jurisdiction over the implementation by the Secretary-General of decisions taken by governing bodies, such as the General Assembly or its subsidiary bodies. To date, staff members have filed applications with the Dispute Tribunal challenging actions taken by the Secretary-General to implement Assembly resolutions and decisions of the International Civil Service Commission (ICSC).

1. General Assembly

282. Under Article 101 of the Charter of the United Nations, "staff shall be appointed by the Secretary-General under regulations established by the General Assembly". Pursuant to that provision, the Assembly promulgates the Staff Regulations and may modify the Staff Rules. Through its resolutions, the Assembly approves the Organization's policies relating to human resources management.

283. In 2010, the General Assembly, in its resolution 65/248, approved the recommendations of the International Civil Service Commission on the harmonization of the conditions of service of staff of the organizations of the United Nations common system serving in non-family duty stations. The consequence of that decision was that a particular benefit, called the "personal transitional allowance", would be discontinued. In the same resolution, the Assembly requested

the Secretary-General to facilitate the immediate implementation of the recommendations of the Commission concerning the harmonization of the conditions of service in non-family duty stations. Accordingly, the Department of Field Support informed staff members serving in the field that the changes approved by the Assembly would become effective on 1 July 2011. In June 2011, the first application challenging the discontinuation of the personal transitional allowance was filed with the Dispute Tribunal. The application alleged that the discontinuation of the personal transitional allowance had an adverse impact on single women, suggesting that it constituted discrimination on the basis of gender or personal status.

284. The Charter requires the Secretary-General to implement the regulations established by the General Assembly on the administration of staff, and, as a consequence, the Secretary-General is also required to implement policies on human resources management as set out in Assembly resolutions. The United Nations Administrative Tribunal had previously held that "the Tribunal is neither the General Assembly nor the Secretary-General, and therefore it is not in a position to substitute its judgement for policy decisions on personnel matters".[20] The legal authority of the resolutions of the General Assembly was reaffirmed in paragraph 9 of resolution 65/251, in which the Assembly stressed that "all elements of the new system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the General Assembly".

285. However, the Dispute Tribunal has held that the Secretary-General's obligation to comply with General Assembly resolutions cannot be invoked as a reason for declining to take a particular action when inaction would lead to a violation of human rights norms, such as the principle of equal pay for equal work. Such a ruling has been confirmed by the Appeals Tribunal.[21] In short, in cases where the Dispute Tribunal determines that the implementation of an Assembly resolution will lead to outcomes inconsistent with human rights norms, then the Secretary-General may be held legally and financially liable for complying with that resolution.

2. International Civil Service Commission

286. The International Civil Service Commission is a subsidiary body of the General Assembly, and its statute was approved by the Assembly in its resolution 3357 (XXIX). Article 6 of its statute expressly prohibits the Commission from taking any instructions from an organization that is participating in the common system and is therefore independent of the Secretary-General. Article 25 (3) of the statute provides that the decisions of the Commission "shall be applied by each organization with effect from a date to be determined by the Commission".

287. In December 2009, the Commission decided to change the duty-station classification of Nairobi from category "C" to category "B". The duty-station classification of Addis Ababa was also changed from category "C" to category "B". Both of these changes took effect on 1 January 2011. The Commission's classifications of duty stations, ranging from category "A" to category "E", reflect the difficulty of conditions of life and work, with category "E" reserved for the most

[20] United Nations Administrative Tribunal judgement No. 1396 (2008) (*Wielechowski*), para. VIII.

[21] United Nations Dispute Tribunal judgement No. 2010/68 (*Chen*) and United Nations Appeals Tribunal judgment No. 2011-UNAT-107 (*Chen*).

difficult duty stations. As a consequence of the reclassification of the duty stations, in Nairobi and Addis Ababa, staff members serving there receive a lower amount of hardship allowance and are entitled to home leave only once every 24 months, as opposed to once every 12 months. Staff members at both duty stations have contested the Secretary-General's implementation of the Commission's decision.

288. The Secretary-General is obliged to implement the Commission's reclassification of Nairobi, in view of article 25 (3) of the Commission's statute and staff rule 3.14, which requires the Secretary-General to determine the amount of the hardship allowance "taking into account the degree of difficulty of life and work at each duty station as per the classification of duty stations established by the International Civil Service Commission". Moreover, the United Nations Administrative Tribunal emphasized that Commission decisions were binding on the Secretary-General. In Administrative Tribunal judgement No. 421 (*Chatwani*), the Tribunal ruled that "it is not for the United Nations Secretary-General or for the Secretaries-General or Directors-General of the other organizations in the common system to revise, modify or rescind a decision adopted by the Commission in accordance with its statute".[22]

3. Clarification of the scope of the jurisdiction of the United Nations Dispute Tribunal

289. Challenges to the implementation by the Secretary-General of decisions by governing bodies, including General Assembly resolutions and decisions by the International Civil Service Commission, are still being reviewed by the Dispute Tribunal. Notably, the Appeals Tribunal has already rejected the argument, made by the Secretary-General in one case, that taking the action requested by the staff member would be contrary to a General Assembly resolution on a budgetary matter, holding that budgetary considerations "may not trump the requirement of equal treatment".[23]

290. Even after the Dispute Tribunal and the Appeals Tribunal rule on particular cases in which the Secretary-General's implementation of General Assembly resolutions and International Civil Service Commission decisions has been challenged, such judgements will not necessarily be dispositive for other situations, as the decisions of those governing bodies cover a broad range of issues relating to human resources management. Moreover, the Dispute Tribunal has emphasized that it will consider rules established by the Appeals Tribunal to be applicable only where they are "in conformity with general principles of law".[24]

291. Accordingly, the Secretary-General considers that it may be helpful for the General Assembly to clarify its intent regarding the scope of the Dispute Tribunal's jurisdiction. The Assembly may wish to consider the appropriateness of imposing financial liability and expending the public funds of the Organization where the Secretary-General has taken action to implement the decisions of governing bodies such as the Assembly and the International Civil Service Commission.

292. Should the General Assembly wish to clarify that the scope of the Dispute Tribunal's jurisdiction would not extend to the implementation by the Secretary-General of decisions of governing bodies such as the Assembly and the

[22] United Nations Administrative Tribunal judgement No. 421 (*Chatwani*), para. VIII.
[23] United Nations Appeals Tribunal judgement No. 2011-UNAT-107 (*Chen*), para. 1.
[24] United Nations Dispute Tribunal Order No. 010 (NBI/2011) (*Abosedra*), para. 60.

Commission, it may consider amending article 2.1 (a) of the Dispute Tribunal's Statute to refer to "an administrative decision unilaterally taken by or on behalf of the Secretary-General that is alleged to be in non-compliance with the terms of appointment or the contract of employment". An action taken by the Secretary-General to implement decisions of governing bodies would not constitute an administrative decision unilaterally taken by the Secretary-General, since he does not have the latitude to act in a manner contrary to decisions by those governing bodies.

293. **The Secretary-General recommends that the General Assembly amend article 2.1 (a) of the statute of the United Nations Dispute Tribunal to refer to "an administrative decision unilaterally taken by or on behalf of the Secretary-General that is alleged to be in non-compliance with the terms of appointment or the contract of employment".**

V. Resource requirements

294. The Secretary-General has identified various areas in the formal justice system requiring strengthening in order to fulfil the mandate that the new system be "independent, transparent, professionalized, adequately resourced and decentralized". The requirements for the informal system are presented separately in the report of the United Nations Ombudsman. For all of the reasons set out above, the Secretary-General recommends that the General Assembly consider enhancing the formal justice system with the following post and non-post resources, besides those requested in the proposed programme budget for the biennium 2012-2013 (A/66/6):

(a) With respect to the Management Evaluation Unit, for the reasons set out in paragraphs 19 and 20 above, the Secretary-General recommends that the Assembly establish an additional post of Legal Officer (P-3) to support the work of the Unit;

(b) With respect to the Dispute Tribunal and its Registries, for the reasons set out in paragraphs 42-44 above, the Secretary-General recommends that the Assembly appoint three additional full-time judges (one each in Geneva, Nairobi and New York) to the Tribunal, reclassify one P-2 Legal Officer post in the Registry in New York as a P-3 post and establish six new posts (3 P-3, 2 General Service (Other level) and 1 General Service (Local level)) to support the additional full-time judges, effective 1 January 2012. The aforementioned capacity was initially approved by the Assembly in its resolution 63/253 for a period of one year effective 1 July 2009 and extended until 31 December 2011 by resolution 65/251, and funded through the use of the limited budgetary discretion granted to the Secretary-General in resolution 60/283 and extended in resolution 64/260. The present proposal is aimed at regularizing the temporary capacity available to the Dispute Tribunal, as set out above;

(c) With respect to non-post resources for the Dispute Tribunal, for the reasons set out in paragraphs 49-51 above, the Secretary-General recommends that the Assembly approve the resources for communications ($25,000) and travel ($155,000);

(d) With respect to the Registry of the Appeals Tribunal, the Secretary-General recommends, for the reasons set out in paragraphs 71-78 above, that it be

strengthened with one Legal Officer (P-4), effective 1 January 2012, as well as additional resources for travel ($280,200) to facilitate a third annual session of the Tribunal and for increased travel privileges of the Tribunal's judges;

(e) With respect to the Office of Staff Legal Assistance, for the reasons set out in paragraphs 83-92 above, the Secretary-General recommends that it be strengthened with four posts (1 P-4 and 1 General Service (Local level) in Nairobi, 1 P-4 in New York and 1 General Service (Other level) in Geneva), effective 1 January 2012. The Secretary-General also recommends that the P-3 position established by resolution 65/251, effective 1 January 2011, currently funded from the support account for peacekeeping operations until 31 December 2011, be continued until 31 December 2012. In addition, the Secretary-General requests resources for communications ($11,200), travel ($15,000) and supplies ($9,000);

(f) With respect to the Office of the Executive Director of the Office of Administration of Justice, for the reasons set out in paragraphs 101-108 above, the Secretary-General recommends that the Assembly authorize general temporary assistance ($130,000) for remuneration for the external members of the Internal Justice Council and to provide for the replacement of staff during extended sick and maternity leave. In addition, the Secretary-General recommends that the Assembly approve the resources for travel ($30,000), contractual services ($37,500) and the acquisition of software packages ($37,500);

(g) With respect to Secretariat offices representing the Secretary-General before the Dispute Tribunal, for the reasons set out in paragraphs 115-156 above, the Secretary-General recommends that the Assembly approve 11 new posts (5 P-4, 3 P-3, 1 General Service (Other level) and 2 General Service (Local Level)), effective 1 January 2012. These include five posts (2 P-4 and 3 P-3) in the Office of Human Resources Management, two posts (1 P-4 and 1 General Service (Other level)) in the United Nations Office at Geneva, two posts (1 P-4 and 1 General Service (Local level)) in the United Nations Office at Nairobi and two posts (1 P-4 and 1 General Service (Local level)) in the Economic and Social Commission for Asia and the Pacific. The Secretary-General, for the reasons set out in paragraphs 153-156 above, recommends that the Assembly approve the resources ($60,000) for travel to conduct outreach missions and for travel to Tribunal hearings at other duty stations;

(h) With respect to the Office of Legal Affairs, for the reasons set out in paragraphs 172-186 above, the Secretary-General recommends that the Assembly establish three posts (2 P-4 and 1 P-3) in the General Legal Division, effective 1 January 2012.

295. Accordingly, should the General Assembly agree with the above proposals, additional resource requirements in the amount of $8,657,900 (before recosting) would be considered in accordance with the provisions governing the contingency fund in accordance with the terms of Assembly resolutions 41/213 and 42/211. In this regard, it is recalled that the Assembly, in its resolution 65/262, approved a contingency fund for the biennium 2012-2013 in the amount of $40.5 million.

296. All new posts reflected in the present report are proposed to be established as from 1 January 2012. Given that the Advisory Committee on Administrative and Budgetary Questions, in paragraph 20 of its first report on the proposed programme budget for the biennium 2008-2009 (A/62/7) recommended that information on the

delayed impact of posts be reflected in any new proposals, the Assembly may wish to note that the additional requirements for the full costing of the proposed 26 new posts in the biennium 2014-2015 are currently estimated at $3,356,400 under section 1, Overall policymaking, direction and coordination, $1,072,200; section 8, Legal affairs, $432,200; section 19, Economic and social development in Asia and the Pacific, $173,500; section 29A, Office of the Under-Secretary-General for Management, $126,200; section 29C, Office of Human Resources Management, $684,600; section 29E, Administration, Geneva, $234,500; section 29G, Administration, Nairobi, $168,300; and section 37, Staff assessment, $464,900, to be offset by an equivalent amount under income section 1, Income from staff assessment.

VI. Conclusions and actions to be taken by the General Assembly

297. **The Secretary-General considers that the recommendations contained in the present report will provide necessary additional strength to the new internal justice system, which already enjoys the confidence of both staff and management. He requests the General Assembly to give due consideration to these proposals and to approve the resources necessary to strengthen its implementation.**

298. **Accordingly, the General Assembly is requested to:**

(a) **Approve the establishment of 26 new posts (10 P-4, 8 P-3, 4 General Service (Other level) and 4 General Service (Local level)), effective 1 January 2012, under the proposed programme budget for the biennium 2012-2013;**

(b) **Approve the reclassification of one P-2 post as a P-3 post, effective 1 January 2012, under the proposed programme budget for the biennium 2012-2013;**

(c) **Appropriate a total amount of $8,657,900 (before recosting) under the programme budget for the biennium 2012-2013, comprising increases under section 1, Overall policymaking, direction and coordination ($3,889,700); section 8, Legal affairs ($559,700); section 19, Economic and social development in Asia and the Pacific ($388,400); section 29A, Office of the Under-Secretary-General for Management ($164,300); section 29C, Office of Human Resources Management ($948,300); section 29D, Office of Central Support Services ($832,700); section 29E, Administration, Geneva ($636,600); and section 29G, Administration, Nairobi ($577,200), and an increase under section 37, Staff assessment ($661,000), to be offset by a corresponding amount under income section 1, Income from staff assessment. The provision would represent a charge against the contingency fund;**

(d) **Approve the continuation of a P-3 position in Nairobi, effective 1 January 2012, for an additional one year, to be funded from the budget for the support account for peacekeeping operations, and the related costs to be reported in the context of the performance report relating to the support account for peacekeeping operations for the period from 1 July 2011 to 30 June 2012 and reflected in the budget proposals for the period from 1 July 2012 to 30 June 2013.**

Annex I

Proposals for staff-funded mechanisms to fund the Office of Staff Legal Assistance

Staff funding mechanism for the Office of Staff Legal Assistance: concept paper

I. Introduction

1. The present concept paper presents various staff funded mechanisms for supporting the Office of Staff Legal Assistance (OSLA) of the Office of Administration of Justice (OAJ), as requested by the General Assembly in paragraphs 40 and 41 of its resolution 65/251. The concept paper addresses the Assembly's request for the submission of proposals based on both mandatory and voluntary contribution models.

2. There are elements common to both the mandatory and the voluntary options presented in the present paper. Specifically, the General Assembly would continue to determine the staffing table of the Office of Staff Legal Assistance and its other financial needs upon the consideration of budgetary proposals by the Secretary-General. In addition, the Secretary-General notes that any decisions regarding the staffing requirements of the Office must take into account any decision taken by the Assembly regarding the mandate and functioning of the Office. The Office posts created pursuant to resolution 63/253 would continue to be funded through the regular budget. The staff funding mechanisms proposed would serve to offset some of the costs of enhancements to the Office's current staffing table as proposed by the Secretary-General. The final common element is that the proposed contributions from staff, either mandatory or voluntary, would be deducted monthly through payroll.

3. Specifically, regarding the mandatory option, it bears noting that, as the General Assembly established the Office of Staff Legal Assistance as part of the Organization's internal system of administration of justice, the expenses associated with its operation constitute expenses of the Organization. Pursuant to Article 17, paragraph 2, of the Charter of the United Nations, "expenses of the Organization shall be borne by the Members as apportioned by the General Assembly". The intention of this paragraph, to require the Member States to bear the expenses of the Organization, is clear from the legislative history of this provision.[a]

4. Accordingly, requiring staff members to bear part of the costs of an "expense" of the Organization, which, under the Charter is to be borne by the Member States, raises legal concerns. Introducing staff-funded schemes for activities of the Organization mandated by the Assembly raises the possibility that in future, other "expenses" of the Organization that might be seen to benefit staff would be underwritten in whole or in part through a levy on staff members.

[a] The records of the San Francisco Conference indicate that "a clear statement of the obligation of Members to meet the expenses of the Organization should be found in the Charter". United Nations Conference on International Organization, *Documents*, Vol. VIII, p. 487.

II. Mandatory mechanisms for staff funding of the Office of Staff Legal Assistance

5. There are three possible mandatory models for a staff funding mechanism for the Office of Staff Legal Assistance: (a) a universal model under which all staff members would contribute a percentage of salary; (b) a model under which only the staff actually using services of the Office would be charged a fee for their use; and (c) a model under which a percentage of dues collected by staff unions and associations would be used to fund activities of the Office. All three models are discussed below.

6. As at 30 June 2010, the population of staff members of the Secretariat and the funds and programmes comprised approximately 45,000 General Service staff members, approximately 30,000 Professional and Field Service staff members, and approximately 1,525 staff members at the Director level and above who have access to the system of administration of justice (see A/65/350 and CEB/2010/HLCM/HR/24).

A. Universal mandatory model

7. Under a universal mandatory model, a fee would be assessed against each staff member. An important consideration for assessing any fee against staff is that salary scales, in particular local salary scales, differ greatly from duty station to duty station. Thus, any fee assessed would need to reflect the various salary scales to ensure that it was equitable and proportionate to the actual salary of each staff member. One possibility would be to assess a percentage of the salary of each staff member having access to the system of administration of justice (for example, .001 per cent). Alternatively, the amount of the fee could be fixed, but dependent upon a determination of the level, grade and duty station of the staff member. The fee would be deducted monthly by payroll.

8. Staff contributions collected would be used to offset some of the expenses of posts other than those currently reflected in the Office of Staff Legal Assistance staffing table established pursuant to General Assembly resolution 63/253 (1 P-5, 5 P-3, 1 P-2 and 3 General Service posts).

9. There are several benefits associated with this model. Principally, with a large staff population, even de minimus individual contributions would result in a significant amount of money to fund the Office. Equally, a universal and mandatory scheme would be the most consistent and stable source of revenue.

10. However, there are also concerns with respect to a mandatory scheme. The first is that, generally, a very small percentage of staff members are expected to avail themselves of the services of the Office. Currently, the percentage of staff who are filing complaints in the formal system is less than 1 per cent. Therefore, approximately 99 per cent of staff would help to pay for services used by less than 1 per cent. This raises concerns as to the fairness of imposing a general levy in the form of a universal mandatory scheme.

11. Another concern relates to the fact that, pursuant to jurisprudence of the United Nations Dispute Tribunal,[b] the Office may decline to provide assistance in a case when it determines that the case lacks legal merit or has sufficiently little possibility of success before the Tribunals. This jurisprudence accords with the

[b] See, for example, UNDT/2010/025 (*Kita*).

generally accepted principle that an officer of the court may not bring before a court a case that he or she does not believe in good faith to have legal merit. Additionally, organizational resources should not be squandered on matters with little or no likelihood of having a positive outcome. However, if a mandatory levy is imposed on all staff, individual staff members may feel that they have a right to representation by the Office of Staff Legal Assistance, irrespective of whether their cases have legal merit or a reasonable likelihood of success. There is a risk, therefore, that if a staff member is denied services despite having paid a levy, he or she might make a complaint or even formally appeal the decision, with additional and possibly significant cost implications for the Organization.

12. This scenario might occur under either a mandatory or a voluntary scheme, as, theoretically, any staff member making a contribution, either mandatory or voluntary, might argue that the payment creates an entitlement to services.

13. Finally, staff members mandated to contribute to the services of an Office established by the General Assembly may consider this a violation of their terms of appointment and conditions of service and appeal it. If a staff member succeeds with such a claim, the Organization will be obliged to reimburse the staff contributions, possibly with additional compensatory payments, at a later stage, to all staff members, with interest.

B. Mandatory assessment for users of services of the Office of Staff Legal Assistance

14. A second possible mandatory staff-funding option would be to mandate that only those staff members who avail themselves of the services of the Office of Staff Legal Assistance would be required to make a contribution. This model would address the concern that staff members who do not avail themselves of the services of the Office would not be required to bear the costs of its funding.

15. If this option is accepted, the required contribution would need to be determined. A fixed contribution would be, essentially, the assessment of a fee for the use of the Office. Other modalities could be contemplated, such as requiring successful applicants to donate a percentage of any compensation awarded.

16. However, because the number of staff members making use of the services of the Office constitutes a very small percentage of the total staff population (approximately 1,000 staff members per year seek the services of the Office), the fee assessed against individual users would need to be higher than the de minimus contribution considered under the universal mandatory model. For example, the annual cost of a P-4 post in Geneva is $227,300. Thus, in order to fully fund a single P-4 post for the Office of Staff Legal Assistance in Geneva, the fee assessed against users of the Office would have to be $227.30 per user. If it were determined that the scheme should only offset a percentage of the costs associated with additional Office posts, the fixed fee would be larger or smaller, depending on the number of posts and the percentage to be offset.

17. Notably, the concern that staff members who have made a mandatory contribution would demand continued legal services and complain or even appeal if the Office declined to represent them, as mentioned above in relation to the universal contribution model, would also apply to this model. However, it could be mitigated if the fee charged to the staff member varied according to the range of services provided to the staff member by the Office. For example, staff members

could be charged a fee of $300 for the negotiation and settlement of their case by the Office, but incur a fee of only $50 for telephone advice from the Office.

C. Mandatory assessment against dues collected by staff unions and associations

18. A third possible mandatory model would be one under which staff associations and staff unions would be required to contribute a portion of the staff dues remitted to them to support the Office of Staff Legal Assistance.

19. The remit of staff unions and associations is to promote and safeguard the rights and interests of staff. Thus, requiring a portion of the dues collected to be contributed to the Office would be analogous to imposing a mandate that staff unions and associations provide, at their expense, some form of legal insurance for the staff whom they represent.

20. Concerns regarding the imposition of a mandatory deduction from unions' financial resources would be similar to those regarding the imposition of a mandatory deduction on individual staff members.

21. Currently, United Nations staff unions and associations may not impose a mandatory dues levy on the staff whom they represent. Accordingly, there are great disparities among individual unions and associations in terms of their financial resources. Several possibilities exist for determining the fee to be paid. One would be to assess a percentage of assessed dues against each staff union or association. Another would be to base the fee on the number of staff represented. A third option would be to assess a fixed amount against all unions and associations. The amount of funds that could be generated under the first two models to offset Office costs would depend on a number of factors (the amount of dues collected under the first model, and the number of staff represented and the amount assessed per person under the second). Under the third model, for example, an assessed contribution of $20,000 per staff union/association (there are 14 unions) would net $280,000 annually. There is a concern, however, that individual unions and associations, in particular those who are not well funded, might complain that the imposition of a levy would impede their ability to provide basic services to their members.

III. Voluntary mechanisms for staff funding of the Office of Staff Legal Assistance

22. There are two possible models for establishing a staff funding mechanism based on voluntary contributions. One would be a system under which a fixed percentage of a staff member's salary would be automatically deducted to support the services provided by the Office of Staff Legal Assistance, but the staff member could elect to opt out of the system. The second would permit staff members to choose the option of contributing a fixed percentage of their salary.

23. Both voluntary models offer the advantage that contributions are made at the consent (express or implied) of participating staff members. However, the amount of revenue that a voluntary model would generate would depend on the number of staff deciding to make contributions, and is therefore difficult to estimate without the actual experience of several annual cycles of contributions that can be assessed as a benchmark.

24. Under both models, it would be necessary to provide staff members with some form of incentive to participate in the scheme. One possible means of encouraging participation would be for the Office to prioritize the cases of staff opting into the scheme and, should it have too many cases to handle effectively at any given time, to decline to provide assistance to a staff member opting out of the voluntary funding scheme.

25. Another way to encourage participation would be to create two levels of Office of Staff Legal Assistance services. Staff participating in the voluntary staff funding mechanism would have access to all Office services. Staff not making voluntary contributions would have access to only basic Office services, namely, summary legal guidance/advice on the operative law and limited review of any document or pleading that the staff member has drafted in support of his or her case. In this connection, an additional incentive for participation in the voluntary scheme could be the addition of the user-pays concept under the mandatory scheme: staff members who did not opt into or have opted out of the voluntary scheme may be obliged to pay for the use of the Office.

26. As with the mandatory model, there is a possibility that complaints and appeals could arise should the Office decline to take the case of a contributing staff member when it concludes that there is little or no chance of a successful outcome. However, these concerns can be mitigated by making it clear to staff members that the Office's decision to provide legal assistance would take into account the merits of their claim.

27. Furthermore, voluntary schemes raise additional questions about contribution thresholds required for the provision of enhanced services. For example, if staff members could opt into the payment of the fixed contribution immediately before they desired the services of the Office and could then opt out as soon as they had received those services, the revenues would be minimal. One solution to this problem would be to allow changes to a staff member's opt-in/opt-out status only, for example, once a year.

IV. Conclusions

28. All models presented above require further consideration before implementation. As discussed above, there are legal concerns relating to the imposition of mandatory models.

29. In addition, there are competing interests of fairness and revenue generation that must be addressed. Mandatory models, if determined to be acceptable, offer a greater likelihood of producing appreciable revenue with which to offset the costs of additional Office resources. However, the amount of revenue that would be generated, even under mandatory models, would depend on the number of paying individuals or entities and the amount or percentage assessed.

30. "User-pays" and voluntary models are likely to be viewed as more fair, as they do not impose costs, even nominal ones, on those who do not use the services of the Office or see no value in contributing in the event that they might use them in the future. This concern is particularly salient, given that 99 per cent of staff members have not been making use, and are not expected to make use, of the Office's services. However, it is more difficult to predict the amount of revenue that would

be generated by any voluntary mechanism. Under a "user-pays" model, the issue would arise as to how to ensure that a contribution would be equitable yet sufficient without excessively decreasing the use of the Office. Therefore, further consideration would be required in order to strike an appropriate balance between making the services of the Office generally available and generating revenue.

V. Recommendation

31. The Secretary-General recommends that the General Assembly take note of this presentation of proposals for mandatory or mixed-funding schemes, and indicate which specific model, if any, it considers to be suitable to serve as the basis for a more detailed proposal from the Secretariat to be submitted for its consideration.

Annex II

Proposal for recourse mechanisms for non-staff personnel

Outline of Rules for Expedited Arbitration Procedures under United Nations contracts with consultants and individual contractors: concept paper

I. Introduction

1. The present concept paper[a] presents possible means of establishing expedited arbitration procedures for the resolution of disputes between the United Nations and certain categories of non-staff personnel, i.e., consultants and individual contractors, by incorporating streamlined elements into the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). This approach was generally alluded to in the report of the Secretary-General on administration of justice at the United Nations (A/65/373 and Corr.1, para. 171). The concept paper does not purport to address the other possible approaches to the resolution of disputes with non-staff personnel referred to in paragraph 9 of General Assembly resolution 64/233, or suggest means of resolving disputes with categories of non-staff personnel not covered by the procedures discussed herein (see General Assembly resolution 65/251, para. 55).

2. The approach set out in paragraph 171 of the Secretary-General's report was raised in the context of arbitrations under the auspices of local, national or regional arbitration associations for claims amounting to less than $25,000. However, the report concluded that "initiating a formal arbitration even under special procedures, for claims valued at $25,000 or less, would not necessarily be efficient or effective for the Organization" (A/65/373 and Corr.1, para. 172). Thus, the expedited procedures outlined below do not presuppose a financial limitation.

3. The procedures set out in the present concept paper could be used for ad hoc arbitrations and for arbitrations under the auspices of an arbitration association, if the association agreed to administer arbitrations under the procedures.

4. In simplifying arbitration procedures, it must be borne in mind that, pursuant to article VIII, section 29, of the Convention on the Privileges and Immunities of the United Nations, the United Nations must provide an appropriate mode of settlement of disputes arising out of its contracts. Thus, procedures set out in the present concept paper seek to preserve essential features of due process.

5. The following are the essential features of the procedures set out in the present concept paper:

- A two-stage process, consisting of an informal dispute resolution phase and an expedited arbitral proceeding in case the informal dispute resolution phase fails
- Non-waivable time limits for filing arbitration claims

[a] The present concept paper was prepared by the General Legal Division of the Office of Legal Affairs, in consultation with the United Nations funds and programmes. It should be noted that the United Nations Children's Fund has reserved its right to opt out of the proposed simplified arbitration procedures.

- Sole arbitrator
- Arbitrator to be chosen from a roster of arbitrators agreed upon by the Organization and the individual contractors/consultants (see para. 7 (d) below)
- Limitation of arbitrator's fees
- Elimination of an appointing authority, but exercise of certain functions of an appointing authority (e.g., selecting/appointing the arbitrator, deciding on a party's challenge to an arbitrator) by a neutral entity
  - The neutral entity could be an international dispute settlement institution (in which case both the Organization and the claimants would have to bear their respective share of the institution's administrative fees)
- Transmittal of arbitration notices and other communications by electronic means, whenever feasible
- Use of standard templates for the parties' submissions
- Simplification and limitation of the number of pleadings and other submissions
- Restrictions on the amendment of pleadings and submissions
- Testimony of witnesses to be by written affidavit, unless the arbitrator decides that the testimony of a witness should be given orally (e.g., to enable the opposing party to cross-examine the witness)
- Conferences and consultations among the arbitrator and parties on preliminary administrative and other matters to be by teleconference or videoconference
- Exceptionally, a party may request a hearing to cross-examine a witness, or the arbitrator may order a hearing if necessary to resolve a substantial issue of fact or law; such hearings normally to be by teleconference or videoconference, to be restricted in scope, and not to exceed two days
- In most cases, arbitrator's award to be based on the parties' written pleadings and submissions (documents-only process)
- Arbitrator to issue the award within a specified time frame, e.g., 30 days
- Any compensation awarded to be limited to economic loss and subject to a cap
- Depending on the number of arbitrations that will be initiated against the Organization under the proposed simplified arbitration procedures, additional resources may be required to defend the Organization and minimize its legal liability.

II. Framework

6. A new set of rules, called the Rules for Expedited Arbitration Procedures under United Nations Consultancy Contracts (hereinafter the "Expedited Rules"), would be prepared, using the UNCITRAL Arbitration Rules as a framework. The Expedited Rules would be based on the provisions of the UNCITRAL Arbitration Rules, modified as necessary to incorporate the expedited procedures discussed herein. The present concept paper indicates the substance (although not necessarily the wording or placement) of such modifications. It also indicates the provisions of

the UNCITRAL Arbitration Rules that are relevant to or would be affected by the proposed procedures. It should be noted that, in addition to the points contained in this concept paper, various other consequential changes to the UNCITRAL Arbitration Rules would be needed (for example, to account for the fact that there would be only one arbitrator).

Overview of the dispute resolution process

7. The Expedited Rules contemplate a two-stage process, consisting of an informal dispute resolution phase and an expedited arbitration proceeding. In the event that the informal dispute resolution phase fails, the parties could proceed to the formal dispute resolution phase, i.e., an expedited arbitration proceeding whose key features are discussed in the following sections.

III. Scope of Expedited Rules (affected article of the UNCITRAL Arbitration Rules: article 1)

8. The Expedited Rules would apply to consultants and other individuals engaged by the United Nations under a contract for the services of a consultant or individual contractor (see ST/AI/1999/7/Amend.1, annex), or under analogous contract forms used by United Nations funds and programmes to contract with consultants and individual contractors (see, e.g., A/62/748 and Corr.1, para. 13 and A/65/373 and Corr.1, annex IV, para. 3). These categories of personnel are collectively referred to in the present concept paper as "individual contractors".

Comments

(a) Under this approach, the Expedited Rules would apply to all individuals engaged pursuant to contracts for the services of a consultant or individual contractor, or analogous contracts. This includes, for example, those experts on mission and workers who are issued such contracts (see A/62/748 and Corr.1, paras. 33 and 40, and A/62/782, paras. 31-35 and 37-39), but not United Nations Volunteers (see A/62/748 and Corr.1, paras. 23 and 24, and A/62/782, paras. 22 and 23), officials other than Secretariat officials (see A/62/748 and Corr.1, paras. 29-31, and A/62/782, paras. 27-29) or other individuals who do not hold such contracts.

(b) The dispute settlement clause in contracts with individual contractors would be changed to provide that disputes not resolved amicably at the informal dispute resolution phase shall be submitted to arbitration in accordance with the Expedited Rules.

(c) The Expedited Rules would set out the specific types of contractual claims to which they would apply, e.g., claims alleging a breach of contract or the improper termination thereof. In addition, the Rules would expressly exclude certain categories of disputes from the scope of the subject-matter jurisdiction, such as claims that a contractor should be accorded the status of a staff member. With respect to the appendix D provision, the arbitrator's role would be limited to verifying that the process accorded the claimant for determining his or her right to equivalent compensation was the one provided for under appendix D to the Staff Rules of the United Nations. In addition, the Expedited Rules would establish non-waivable time limits for filing claims.

(d) Since, in contrast to the UNCITRAL Arbitration Rules, the Expedited Rules would not necessarily be familiar or readily available to individual contractors or consultants, the Expedited Rules should either be attached to each contract (including the name of the entity from which individual contractors or consultants can obtain the current list of arbitrators) or provided to each individual contractor or consultant prior to contract signature. The individual contractor or consultant must sign an acknowledgement that (i) he or she has been provided with the Expedited Rules, (ii) the Expedited Rules form an integral part of the contract and (iii) the list of arbitrators is acceptable to him or her.

IV. Notices and other communications (affected article of the UNCITRAL Arbitration Rules: article 2)

9. The parties and the arbitrator shall transmit any notice, communication or proposal under the Expedited Rules by electronic means, unless such a mode of transmission is not available or possible for technical reasons. [*Comment*: These might include, for example, the non-availability or malfunctioning of electronic means of transmission, the bulkiness of a pleading or submission, etc.]

V. Pleadings and other submissions (affected articles of the UNCITRAL Arbitration Rules: articles 3, 4, 20, 21, 22, 23 (2), 24 and 25)

Preliminary comment

Under the following provisions, the respondent would not be required to submit its statement of defence until after the arbitrator had been appointed. The reason for this is that the respondent might wish to raise a plea as to the jurisdiction of the arbitrator (e.g., that the dispute is not arbitrable under the arbitration clause asserted by the claimant or that for some other reason the arbitrator lacks jurisdiction) or request an early dismissal of the claim because the claim is manifestly without legal merit. The respondent should not have to present its full statement of defence and accompanying documents until an arbitrator rules on the issue of jurisdiction or on the respondent's challenge on the merits.

10. The claimant initiates arbitration proceedings by issuing a request for arbitration and statement of claim. This pleading would contain information analogous to that provided under the UNCITRAL Arbitration Rules for the notice of arbitration and the statement of claim. In it, the claimant would describe the claim and summarize the grounds and arguments supporting it.

11. Within 60 days after receiving the claimant's request for arbitration and statement of claim, the respondent must issue a response to the request for arbitration. The response should include a plea as to jurisdiction and should address other matters, such as the identification of each respondent and a response to information set out in the claimant's request for arbitration. Standard templates should be used for the parties' submissions.

12. If the respondent raises a plea as to jurisdiction, it shall include in its response to the request for arbitration all facts and arguments that it wishes to present in support of the plea and, as far as possible, attach to its response all documents relied upon or provide references to them.

13. If the respondent raises a plea for early dismissal of the claim because the claim is manifestly without legal merit, it shall include in its response to the request for arbitration all facts and arguments that it wishes to present in support of the plea and, as far as possible, attach to its response all documents relied upon or provide references to them.

14. After the appointment of the arbitrator:

(a) If the respondent has raised a plea as to jurisdiction, the arbitrator shall, after consulting with the parties, establish a time limit within which the claimant must submit any response to the plea. The arbitrator then rules on the respondent's plea as to jurisdiction [*comment*: there would be no hearing — see section XIII below] and, if the arbitrator rules that jurisdiction exists, establishes the time limit within which the respondent must issue a statement of defence;

(b) If the respondent has raised a plea for early dismissal of the claim because the claim is manifestly without legal merit, the arbitrator shall, after consulting the parties, establish a time limit within which the claimant must submit any response to the plea. The arbitrator then rules on the respondent's plea to dismiss the claim because it is manifestly without legal merit [*comment*: there would be no hearing — see section XIII below] and, if the arbitrator nevertheless upholds the claim, establishes the time limit within which the respondent must issue a statement of defence;

(c) If the respondent has not raised a plea as to jurisdiction or for early dismissal of the claim because the claim is manifestly without legal merit, the arbitrator establishes the time limit within which the respondent must issue a statement of defence.

15. The statement of defence would contain information analogous to that provided under the UNCITRAL Arbitration Rules for the statement of defence. In it, the respondent would reply to the particulars set out in the statement of claim, and may include a counterclaim or set-off and raise a plea as to jurisdiction, unless such a plea has previously been raised. The statement of defence should, as far as possible, be accompanied by all documents or other evidence relied upon by the respondent, or contain references to them.

VI. Extensions or abridgements of time limits (affected article of the UNCITRAL Arbitration Rules: article 17 (2))

16. Any time limits established by the Expedited Rules or agreed by the parties may, at any time, be extended or abridged if the parties so agree, or if the arbitrator so decides after inviting the parties to express their views.

VII. Amendment of a pleading (affected article of the UNCITRAL Arbitration Rules: article 22)

17. After an arbitrator has been selected and accepts appointment, a party may not amend its pleading unless the opposing party agrees or the arbitrator allows the party to amend its pleading. A request to the arbitrator to amend a pleading shall be accompanied by the text of the proposed amendment, and the reasons and justification for the amendment. In deciding whether to allow an amendment, the arbitrator shall consider whether the interests served by allowing it are outweighed by any delay in the proceedings, prejudice to the opposing party or any other circumstance. In allowing an amendment to a pleading, the arbitrator shall establish a deadline within which the opposing party may respond to the amendment. If a pleading is amended, the opposing party may respond solely to the amendment.

VIII. Additional submissions (affected article of the UNCITRAL Arbitration Rules: article 24)

18. After consulting with the parties, the arbitrator shall establish a deadline within which each party may make one additional submission of facts, legal arguments or documents. Such submissions shall be in writing. After this deadline, no further submissions shall be permitted. Notwithstanding the foregoing, a party shall not be allowed to present in its additional submission a fact or document that was or should have been known to, or that was available to, the party seeking to submit it at the time of submission of its pleading or additional submission.

IX. Discovery (affected article of the UNCITRAL Arbitration Rules: article 27 (3))

19. At the request of a party or upon the arbitrator's own initiative, the arbitrator may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the arbitrator to be necessary for a fair and expeditious disposal of the proceedings. However, the arbitrator shall not order the production or disclosure of any evidence, document or information that is confidential or protected by privilege.

20. A party wishing to submit non-privileged or non-confidential evidence that is in the possession of the opposing party or of any other entity may request the arbitrator to order the production of the evidence.

21. The arbitrator may, at the request of either party, impose measures to preserve the confidentiality of evidence, where warranted by security interests or other exceptional circumstances.

Comment

These provisions are based on article 18 of the rules of procedure of the United Nations Dispute Tribunal.

X. Witness testimony (affected article of the UNCITRAL Arbitration Rules: article 27 (2))

22. The statement or testimony of any witnesses, including any individual claimant or respondent, shall be made by the witness in a written and sworn affidavit, which shall be notarized or otherwise legally authenticated, unless the arbitrator decides that the interests of justice necessitate that the testimony be given at a hearing.

Comment

See section XIII below, regarding hearings. Subject to certain exceptions, the hearing would be by teleconference or videoconference. The written witness statement would have to be submitted as part of the party's pleading or additional submission (see section VIII above).

XI. Appointing authority (affected article of the UNCITRAL Arbitration Rules: article 6)

23. There would be no appointing authority.

24. However, certain functions of the appointing authority would remain necessary, e.g., with regard to the selection or appointment of arbitrators, challenges of arbitrators, etc. These could be performed by a neutral entity.

25. The neutral entity could be an international dispute settlement institution to be selected through a competitive procurement exercise.

26. The benefits of having an international dispute settlement institution as the neutral entity are the following: (a) such an institution would provide access to existing expertise in administering all aspects of arbitration proceedings; (b) such an institution, selected through a competitive procurement exercise, would reflect the commercial nature of the underlying contract; and (c) having an outside institution administer the arbitration would de-link the neutral entity from the Organization and eliminate any perception of partiality. However, both the claimants and the respondent would have to bear their respective share of the institution's administrative fees.

XII. Arbitrator (affected articles of the UNCITRAL Arbitration Rules: articles 7-15)

27. Number and appointment (affected articles of the UNCITRAL Arbitration Rules: articles 7-10):

(a) There would be a sole arbitrator;

(b) The neutral entity discussed in section XI above would establish and maintain a roster of potential arbitrators;

(c) As a condition for being included in the roster, the arbitrator would be required to sign a document confirming that it agrees, if appointed as arbitrator in a case, to conduct the arbitration in accordance with the Expedited Rules, and agrees also to the limitation of the arbitrator's fees (see section XVI below);

(d) Appointment of the arbitrator: the neutral entity discussed in section XI above would select an arbitrator from the aforementioned roster of potential arbitrators. To make the process more predictable, a list procedure could be used, whereby the parties would pick their top choices from a list of several candidates, which would be communicated to each of them separately and in confidence by the neutral entity.

28. Challenge to the arbitrator (affected articles of the UNCITRAL Arbitration Rules: articles 11-15): the Expedited Rules would retain provisions in the UNCITRAL Arbitration Rules regarding challenge of the arbitrator, but provide that, if the parties do not agree on the challenge or if the arbitrator does not withdraw voluntarily, a decision on the challenge shall be made by the neutral entity referred to in section XI above. The parties' agreement on a challenge or the arbitrator's decision to step down would be dispositive and would automatically trigger a new selection process.

XIII. Arbitral proceedings (affected articles of the UNCITRAL Arbitration Rules: articles 17, 27 (2), 28, 29 and 31)

29. The proceedings shall be conducted on the basis of the written pleadings and submissions of the parties, except as provided below.

30. All conferences and consultations among the arbitrator and parties on administrative and other matters preliminary to the proceedings on the merits of the case shall be generally conducted by e-mail or teleconference.

31. There shall be no hearings on a plea as to jurisdiction or on a plea for early dismissal of a claim because the claim is manifestly without legal merit. The arbitrator shall decide such pleas on the basis of the written submissions of the parties.

32. There shall be no hearings on the merits of the case for the presentation of evidence, testimony or oral argument, unless (a) a party requests a hearing in order to cross-examine a witness, or (b) the arbitrator decides that there is a substantial issue of fact or law that can be fairly and justly resolved only with a hearing. Any hearing shall be limited to the cross-examination of the witness or such issue of fact or law. Such hearings shall be by teleconference or videoconference, except where the arbitrator decides, in exceptional circumstances, that an issue of fact can be resolved only with an in-person hearing. Any such hearing(s) should not exceed two days.

33. Article 29 of the UNCITRAL Arbitration Rules (which provides for the arbitral tribunal to appoint its own independent experts) would be deleted.

XIV. Applicable law (affected article of the UNCITRAL Arbitration Rules: article 35 (1))

34. The Expedited Rules would provide that, unless otherwise agreed by the parties, the decisions of the arbitral tribunal shall be based on the express contractual terms, including any general terms and conditions referred to therein. Neither the Staff Regulations and Rules of the United Nations nor national laws will apply to the dispute.

XV. The award (affected articles of the UNCITRAL Arbitration Rules: articles 33 and 34)

35. The arbitrator shall have no authority to award punitive damages, or to decide as amiable compositeur or ex aequo et bono. In addition, unless otherwise expressly provided in the contract, the arbitrator shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

Comment

These provisions have been taken from the arbitration clause in the United Nations General Conditions of Contract.

36. The arbitrator shall issue the award within 30 days after the closure of the proceedings. Any compensation to be awarded shall be limited to economic loss and shall be subject to a cap [to be determined].

XVI. Costs and fees (affected articles of the UNCITRAL Arbitration Rules: articles 40, 41 and 43)

37. Arbitrator's fee: the Expedited Rules would limit the fee of the arbitrator. The limitation on arbitrator's fees should be set forth in both the Expedited Rules and the document to be signed by an arbitrator as a condition to being placed on the roster (see section XII above, para. 27 (c)).

38. Determination and allocation of fees and costs: regardless of the outcome of the case, each party shall bear its own costs and fees, and the parties shall share the costs and fees of the arbitrator equally. However, in exceptional circumstances, the arbitrator may decide that a different allocation of the parties' costs and fees or the costs and fees of the arbitrator would be just and equitable.

XVII. Confidentiality (affected articles of the UNCITRAL Arbitration Rules: articles 28 (3) and 34 (5))

39. The entire arbitration proceedings, including all notices, communications, pleadings, documents, submissions, hearings and awards, shall be kept confidential, unless the parties otherwise agree in writing. However, the United Nations, or its fund or programme, may communicate to its governing bodies such information concerning the proceedings as the governing body may require.

Other matters

Privileges and immunities

40. Since, unlike the UNCITRAL Arbitration Rules, these Expedited Rules would be established specifically for United Nations arbitration cases, it would be desirable for the Rules to contain a privileges and immunities clause:

"Nothing in or related to these [use full name of Rules] shall be interpreted or applied in a manner inconsistent with the privileges and immunities of the United Nations, including its subsidiary organs, or be deemed a waiver of such privileges and immunities. For the avoidance of doubt, any arbitration conducted under these [use full name of Rules] shall not be subject to any local laws, and any reference to a 'place of arbitration' shall not be deemed or construed as a waiver of such privileges and immunities or an agreement of the United Nations to subject itself to any national jurisdiction."

Annex III

Compensation awarded by the Management Evaluation Unit, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal

A. Monetary compensation awarded by the Management Evaluation Unit (1 July 2009-31 May 2011)

	Breakdown of compensation paid (from 1 July 2009 to 31 May 2011)		
Department of decision maker	*Amount of compensation*	*Level of staff member*	*Reason for compensation*
United Nations Office at Geneva	$500.00	P-4	Failure to notify staff member of outcome of selection process
United Nations Office at Geneva	3 months' net base salary	P-3	Breach of 15-day rule
United Nations Office at Geneva	1 month's net base salary (SwF 7,040.50)	G-5	Breach of 15-day rule
Office for the Coordination of Humanitarian Affairs (Geneva)	$2,127.00	P-4	Reimbursement of recovered home leave (lump-sum payment)
Office of the United Nations High Commissioner for Human Rights (Geneva)	3 months' net base salary ($17,680)	P-4	Breach of 15-day rule
Department of Field Support	3 months' net base salary	FS-4	Mishandling of recruitment
Department of Field Support-United Nations Interim Administration Mission in Kosovo	7 months' net base salary	G-5	Abolition of post
Department of Field Support-United Nations Interim Administration Mission in Kosovo	$5,154.76	FS-6	Reimbursement for recovery of lump-sum payment
Department of Field Support-United Nations Observer Mission in Georgia	3 months' net base salary	FS-4	Unfair treatment
Department of Field Support-United Nations Interim Administration Mission in Kosovo	2 months' net base salary	P-3	Lack of due process
United Nations Office at Nairobi	3 months' net base salary	G-4	Legitimate expectation of renewal
United Nations Environment Programme	3 months' net base salary	D-1	Inordinate delay
United Nations Environment Programme	3 months' net base salary	G-7	Inordinate delay

Breakdown of compensation paid (from 1 July 2009 to 31 May 2011)

Department of decision maker	*Amount of compensation*	*Level of staff member*	*Reason for compensation*
United Nations Environment Programme	3 months' net base salary	P-5	Inordinate delay
Department of Management	3 months' net base salary	P-3	Withdrawal of accepted offer of appointment
Department for General Assembly and Conference Management	$5,473.09	G-7	Mishandling of selection process
Department for General Assembly and Conference Management	$12,891.00	G-5	Mishandling of selection process
Office of Internal Oversight Services (Vienna)	$1,044.89	P-3	Non-payment of special post allowance

B. Monetary compensation awarded by the United Nations Dispute Tribunal and United Nations Appeals Tribunal (1 July 2009-31 May 2011)

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2009/013	Parker	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Three months' net base salary at the P-4 level; (2) two months' net base salary at the P-4 level	2010-UNAT-002	Dispute Tribunal judgement reversed. Amount of $35,778 paid, to be recovered in view of reinstatement	N/A	N/A	N/A
UNDT/2009/038	Andrysek	Geneva	Office of the United Nations High Commissioner for Refugees	SwF 9,000.00 (compensation as an alternative to rescission)	N/A	N/A	SwF 9 000	9 554.00	07/02/2011
UNDT/2009/039	Mebtouche	Geneva	Office of the United Nations High Commissioner for Refugees	Rescission or SwF 9,000.00	2010-UNAT-033	Dispute Tribunal order for payment increased to three months' net base salary	$25 459.00	25 459	10/06/2010
UNDT/2009/040	Ardisson	Geneva	Office of the United Nations High Commissioner for Refugees	Rescission or SwF 8,000.00	N/A	N/A	SwF 8 000	7 797.00	21/09/2010
UNDT/2009/041	Ippolito	Geneva	Office of the United Nations High Commissioner for Refugees	Rescission or SwF 8,000.00	N/A	N/A	SwF 8 182	7 705.00	27/04/2010
UNDT/2009/044	Mututa	Geneva	Office of the United Nations High Commissioner for Refugees	Rescission or SwF 8,000.00	N/A	N/A	SwF 8 182	7 705.00	28/04/2010
UNDT/2009/045	Solanki	Geneva	Office of the United Nations High Commissioner for Refugees	Rescission or SwF 8,000.00	N/A	(Confirmed by Appeals Tribunal: 2010-UNAT-044)	SwF 8 000	7 797.00	21/09/2010
UNDT/2009/084	Wu	Geneva	United Nations Office at Geneva	Two months' net base salary at the P-4 level (Geneva)	N/A	(Confirmed by Appeals Tribunal: 2010-UNAT-042)	$13 659.67	13 659.67	27/10/2010

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/005/ Corr.1	Azzouni	Geneva	Economic and Social Commission for Western Asia	N/A	2010-UNAT-081	Dispute Tribunal judgement is set aside. Reinstatement or compensation in the amount of two years' net base salary	$156 282.00	156 282.00	25/02/2011
UNDT/2010/009	Allen	Geneva	United Nations Conference on Trade and Development	$12,000.00	N/A	N/A	$12 000.00	12 000.00	25/03/2010
UNDT/2010/035	Megerditchian	Geneva	United Nations Development Programme	Three months' net base salary at the G-5 level (Geneva)	2010-UNAT-088	Dispute Tribunal judgement is rescinded and the award of damages vacated	N/A	N/A	N/A
UNDT/2010/050	Kaddoura	Geneva	Economic and Social Commission for Western Asia	Eight days' special post allowance from G-6 to P-2	N/A	N/A	$953.82	953.82	12/05/2011
UNDT/2010/063	Weiler	Geneva	Office of the United Nations High Commissioner for Human Rights	Four months' net base salary at the level of G-5, step XII (Geneva)	N/A	N/A	$31 718.55	31 718.55	23/07/2010
UNDT/2010/064	Fuentes	Geneva	United Nations Office at Geneva	SwF 24,500.00	N/A	N/A	$24 500.00	24 500.00	11/05/2011
UNDT/2010/070	Farraj	Geneva	United Nations Development Programme	Rescission or $45,000.00	N/A	N/A	$45 000.00	45 000.00	N/A
UNDT/2010/106	Eid	Geneva	United Nations Interim Force in Lebanon	$29,991.23 and LL 9,552,660.00 with interest rates	N/A	N/A	N/A	N/A	N/A
UNDT/2010/108	Larkin	Geneva	Office of the United Nations High Commissioner for Refugees	Four months' net base salary at the G-6 level (London)	N/A	N/A	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/120	Ostensson	Geneva	United Nations Conference on Trade and Development	(1) Rescission of non-selection decision; (2) $4,900 as alternative; (3) award of $48,000	N/A	N/A	$76 900.00	76 900.00	22/09/2010
UNDT/2010/121	Ostensson	Geneva	United Nations Conference on Trade and Development	$24,000 in compensation for violation of rights	N/A	N/A			
UNDT/2010/122	Zerezghi	Geneva	United Nations Interim Administration Mission in Kosovo	(1) Reinstatement; (2) payment of eight months' net base salary at the time of separation as alternative; (3) $60,000 as compensation for moral injury	N/A	N/A	$99 936.18	99 936.18	12/10/2010
UNDT/2010/128	Ikpa	Geneva	United Nations Office at Geneva	(1) Six weeks' payment in lieu of notice, minus one week already received; (2) one year's net base salary, minus compensation already received (both payments in net base salary at the time of separation)	N/A	N/A	$59 592.00	59 592.00	12/10/2010
UNDT/2010/129	Valle Fischer	Geneva	United Nations Office at Geneva	(1) Six weeks' payment in lieu of notice, minus one week already received; (2) one year's net base salary as at 9 February 2006, minus compensation already received (both payments based on net base salary at the time of separation)	N/A	N/A	$54 697.00	54 697.00	08/10/2010

United Nations Dispute Tribunal judgment No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgment No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/130	Applicant	Geneva	International Tribunal for the Former Yugoslavia	(1) Payment of three months' net base salary in addition to the eight months already paid; (2) three months' net base salary for injury suffered (net base salary on date of termination)	N/A	N/A	$50 263.50	50 263.50	15/10/2010
UNDT/2010/133	Eldam	Geneva	United Nations Observer Mission in Georgia	(1) Rescission of decision not to renew contract; (2) three months' net base salary as alternative; (3) three months' net base salary for moral injury	N/A	N/A	$26 204.40	26 204.40	30/09/2010
UNDT/2010/169	Yapa	Geneva	United Nations Office at Geneva	SwF 1,000	N/A	N/A	N/A	N/A	N/A
UNDT/2010/172	Lauritzen	Geneva	Office of the United Nations High Commissioner for Refugees	$15,000 as compensation for moral damage	N/A	N/A	N/A	N/A	N/A
UNDT/2010/178	Tsoneva	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Rescission of decision not to promote to P-4; (2) SwF 8,000 as alternative; (3) SwF 4,000 for moral damage	N/A	N/A	SwF 12 000	12 739.00	21/02/2011
UNDT/2010/179	Vangelova	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Rescission of decision not to promote to P-4; or (2) SwF 8,000	N/A	N/A	N/A	N/A	N/A
UNDT/2010/187	Duaileb	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Rescission of decision not to promote to the D-1 level; or (2) SwF 10,000	N/A	N/A	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	Applicant's last name	Registry	Entity	Compensation awarded by United Nations Dispute Tribunal	United Nations Appeals Tribunal judgement No.	Compensation awarded by United Nations Appeals Tribunal	Net amount paid (local currency)	Net amount paid (United States dollars)	Date
UNDT/2010/189	Akyeampong	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Rescission of decision not to promote to the D-1 level; or (2) SwF 10,000	N/A	N/A	N/A	N/A	N/A
UNDT/2010/190	Bofill	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Rescission of decision not to promote to the D-1 level; or (2) SwF 10,000	N/A	N/A	N/A	N/A	N/A
UNDT/2010/211	Applicant	Geneva	United Nations International Independent Investigation Commission	Four months' net base salary as compensation	N/A	N/A	$24 658.28	24 658.28	17/03/2011
UNDT/2011/022	Edwards	Geneva	United Nations Office at Vienna	Two and a half months' net base salary as at date of judgement	N/A	N/A	N/A	N/A	N/A
UNDT/2011/035	Marsh	Geneva	United Nations Office at Vienna	€5,000	N/A	N/A	$7 886.44	7 886.44	17/04/2008
UNDT/2011/036	Edelenbos	Geneva	Office of the United Nations High Commissioner for Human Rights	SwF 12,000	N/A	N/A	SwF 12 000	14 405.76	N/A
UNDT/2011/050	Ostensson	Geneva	United Nations Conference on Trade and Development	$10,000	N/A	N/A	$10 000.00	10 000.00	06/05/2011
UNDT/2011/057	Grigoryan	Geneva	Office of the United Nations High Commissioner for Refugees	(1) Specific performance or SwF 15,000; (2) SwF 2,000	N/A	N/A	N/A	N/A	N/A
UNDT/2009/016	Tadonki	Nairobi	United Nations (Office for the Coordination of Humanitarian Affairs)	Half salary from 1 September 2009 until final determination	N/A	N/A	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2009/058	Tadonki	Nairobi	United Nations (Office for the Coordination of Humanitarian Affairs)	Half salary from 1 September 2009 until final determination	N/A	N/A	N/A	N/A	N/A
UNDT/2009/088	Noguiera	Nairobi	United Nations Environment Programme	24 months' net base salary at the D-1 level	N/A	N/A	$210 794.00	210 794.00	30/03/2010
UNDT/2010/002	Xu	Nairobi	United Nations Office at Nairobi	Six months' net base salary at the P-4 level	N/A	N/A	N/A	N/A	N/A
UNDT/2010/036	Sanwidi	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	Amount of compensation in judgement No. UNDT/2010/061	2011-UNAT-104	Dispute Tribunal judgement on compensation is vacated	N/A	N/A	N/A
UNDT/2010/053	Mmata	Nairobi	United Nations Children's Fund	(1) Rescission of the administrative decision, reinstatement and payment of lost earnings from the date of separation to the date of reinstatement, with interest; or (2) compensation for lost earnings and compensation of two years' net base salary as at the date of separation, with interest	2010-UNAT-092	Tribunal orders that interest is to be paid at the United States prime rate	$222 453.57	222 453.57	27/01/2011
UNDT/2010/056	Masri	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	Lost earnings from date of summary dismissal to date of reinstatement, with interest (alternatively, two years' net base salary as at date of separation, with interest); demotion	2010-UNAT-098	Dispute Tribunal judgement reversed and summary dismissal affirmed	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/057	Ianelli	Nairobi	United Nations Office for Project Services	Assignment and relocation grants to be paid, including interest, from the date that the payments fell due	2010-UNAT-093	Interest awarded at the United States prime rate applicable on the date that the entitlement to the grants became due	$51 395.35	51 395.35	07/12/2010
UNDT/2010/061	Sanwidi	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	(1) Lost earnings from date of summary dismissal to the date of reinstatement with interest, less $2,600 per month; (2) two years' net base salary in lieu of reinstatement	2011-UNAT-104	Dispute Tribunal judgement on compensation is vacated	N/A	N/A	N/A
UNDT/2010/084	Teferra	Nairobi	Economic Commission for Africa	Judgement on compensation pending	N/A	N/A	N/A	N/A	N/A
UNDT/2010/089	Frechon	Nairobi	International Criminal Tribunal for Rwanda	Remand and payment of three months' net base salary for delay	N/A	N/A	N/A	N/A	N/A
UNDT/2010/097	Lutta	Nairobi	United Nations Operation in Côte d'Ivoire, United Nations Office at Nairobi	(1) Three months' current net base salary as compensation; (2) $4,760 as compensation for travel costs; (3) six months' current net base salary as compensation for moral damage	2011-UNAT-117	Affirmed	$46 339.86	46 339.86	13/06/2011

United Nations Dispute Tribunal judgemen. No	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/118	Cohen	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	(1) Reinstatement; (2) payment of salaries and entitlements from the date of summary dismissal to the date of judgement, with interest; (3) two months' net base salary compensation for breach of due process; (4) two years' net base salary as at date of separation, in lieu of reinstatement	N/A	N/A	$101 624.00	101 624.00	29/12/2010
UNDT/2010/119	Gaskins	Nairobi	United Nations Development Programme	Six months' net base salary as at date of separation	N/A	N/A	$40 420.98	40 420.98	N/A
UNDT/2010/124	Frechon	Nairobi	International Criminal Tribunal for Rwanda	(1) Reinstatement to appropriate position, given the impairment suffered; (2) lost earnings from date of termination to date of reinstatement, with interest; (3) payment of special sick-leave entitlement; (4) two years' net base salary, in lieu of reinstatement	N/A	N/A	N/A	N/A	N/A
UNDT/2010/125	Teferra	Nairobi	Economic Commission for Africa	Three months' current net base salary for violation of rights	N/A	N/A	Br 47 861.76	2 906.00	N/A
UNDT/2010/131	Thiam	Nairobi	International Criminal Tribunal for Rwanda	(1) Tickets, or amount equal to tickets, for relevant travel and shipment between Arusha and Nairobi; (2) payment of travel expenses	N/A	N/A	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/153	Verschuur	Nairobi	United Nations Human Settlements Programme	Six months' net base salary	N/A	N/A	N/A	N/A	N/A
UNDT/2010/154	Contreras	Nairobi	United Nations Human Settlements Programme	(1) Six months' net base salary as compensation for injury; (2) token sum of $1	N/A	N/A	N/A	N/A	N/A
UNDT/2010/173	Parkes	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	(1) Rescission of summary dismissal; or (2) compensation equivalent to termination benefits	N/A	N/A	$57 503.39	N/A	07/03/2011
UNDT/2010/175	Bekele	Nairobi	Economic Commission for Africa	(1) Salary from date withheld to date of decision to take no further action in respect of complaint, with interest; (2) six months' net base salary for due-process violations	N/A	N/A	N/A	N/A	N/A
UNDT/2010/185	M'bra	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	(1) Reinstatement; (2) salary and entitlements from the date of summary dismissal to the date of judgement, with interest; (3) two months' net base salary for breach of due-process rights; (4) two years' net base salary as at date of separation, in lieu of reinstatement	N/A	N/A	$377 257.92	N/A	26/01/2011
UNDT/2010/196	Goddard	Nairobi	United Nations Mission in the Central African Republic and Chad	Three months' net base salary as at date of separation	N/A	N/A	$22 397.50	N/A	09/02/2011

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/197	Bowen	Nairobi	United Nations Development Programme	(1) Rescission of decision to terminate contract; (2) salary and entitlements applicant would have received until end of contract in 2004, less payments in lieu of notice; (3) two years' net base salary as at the time of termination; (4) interest	N/A	N/A	N/A	N/A	N/A
UNDT/2010/214	Kamunyi	Nairobi	United Nations Office at Nairobi	Two years and six months' net base salary	N/A	N/A	N/A	N/A	N/A
UNDT/2011/007	Ndjadi	Nairobi	United Nations Development Programme	$500 for abuse of process	N/A	N/A	N/A	N/A	N/A
UNDT/2011/017	Harding	Nairobi	Office of the United Nations High Commissioner for Refugees	(1) Two years' net base salary (for non-reinstatement); (2) six months' salary (breach of due-process rights); (3) special post allowance with interest; (4) six months' salary (for emotional distress); (5) all salaries and entitlements due	N/A	Item (3) paid; other items are pending appeal with Appeals Tribunal	Le 50 515 280	12 246.00	03/12/2010
UNDT/2011/020	Omondi	Nairobi	United Nations Office at Nairobi	Two months' net base salary	N/A	N/A	KSh 524 883.00	6 304.90	04/05/2011
UNDT/2011/054	Applicant	Nairobi	Office of the United Nations High Commissioner for Refugees	Rescission of decision to summarily dismiss the applicant (compensation to be determined by parties or, if no agreement, by Tribunal)	N/A	N/A	N/A	N/A	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2011/060	Finniss	Nairobi	Office of Internal Oversight Services	(1) 18 months' current net base salary; (2) six months' current net base salary for violation of rights	N/A	N/A	N/A	N/A	N/A
UNDT/2011/067	Borhom	Nairobi	Office of the United Nations High Commissioner for Refugees	(1) Two years' net base salary (for non-reinstatement); (2) six months' net base salary for moral damage; (3) six months' net base salary for violation of due-process rights	N/A	N/A	LE 164 301	27 660.00	10/07/2011
UNDT/2011/086	Sow	Nairobi	United Nations Organization Mission in the Democratic Republic of the Congo	Two months' net base salary as at date decision was taken — no payment yet	N/A	N/A	N/A	N/A	N/A
UNDT/2011/092	Xu	Nairobi	United Nations (Department for General Assembly and Conference Management)	(1) Two months' net base salary as at date of judgement; (2) four months' net base salary as date of judgement; (3) $500	N/A	N/A	N/A	N/A	N/A
UNDT/2009/025/Corr.1	James	New York	United Nations (Department of Political Affairs)	Three months' salary	2010-UNAT-009	Order for compensation set aside	N/A	N/A	N/A
UNDT/2009/028	Crichlow	New York	United Nations Population Fund	One months' net base salary	N/A	N/A	$4 929.75	4 929.75	21/12/2009
UNDT/2009/075	Castelli	New York	United Nations Mission in Nepal	Relocation grant and retroactive interest	N/A	Interest changed by Appeals Tribunal in judgement No. 2010-UNAT-082	$16 597.90	16 597.90	11/03/2011

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/001	Abboud	New York	United Nations (Department for General Assembly and Conference Management)	$20,000	2010-UNAT-100	Rescission of decision to award damages	N/A	N/A	N/A
UNDT/2010/011	Castelli	New York	United Nations Mission in Nepal	(1) Interest on the relocation grant; (2) parties are to jointly submit a draft order with appropriate sum, plus interest	2010-UNAT-082	Appropriate interest at United States prime rate	N/A	N/A	N/A
UNDT/2010/015	Warren	New York	United Nations Office for Project Services	$20,546, plus interest from March 2008 to the date of payment	2010-UNAT-059	Dispute Tribunal's order on payment of interest is vacated; Secretary-General is ordered to pay appropriate interest at United States prime rate	$23 013.63	23 013.63	9 July 2010 (principal) and 12 August 2010 and 27 September 2010 (interest)
UNDT/2010/026	Kasyanov	New York	United Nations (Department for General Assembly and Conference Management)	(1) $59,932; and (2) lateral move or additional amount of $20,000 if specific performance ordered is not performed	2010-UNAT-076	Changed to two months' net base salary as compensation	$13 969.83	13 969.83	09/02/2011
UNDT/2010/040	Koh	New York	United Nations Development Programme	$2,000	N/A	N/A	$2 000.00	2 000.00	N/A
ORDER 57	Koh	New York	United Nations Development Programme	$107,107.60	N/A	N/A	$107 107.60	107 107.60	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/042	Gomez	New York	United Nations (Office for the Coordination of Humanitarian Affairs)	(1) Two months' net base pay; (2) adjustment and compensation for various entitlements (amount to be determined by the parties); (3) $8,998 additional compensation	N/A	N/A	N/A	N/A	N/A
UNDT/2010/055	Abbasi	New York	United Nations Children's Fund	(1) $30,000; (2) 12 months' net base salary at the rate applicable for the post of Operations Officer	2011-UNAT-112	Reversed in its entirety	N/A	N/A	N/A
UNDT/2010/059	Antaki	New York	United Nations (Department for General Assembly and Conference Management)	$1,000	2010-UNAT-095	Dispute Tribunal decision on award of compensation is set aside	N/A	N/A	N/A
UNDT/2010/060	Sina	New York	United Nations Development Programme	(1) $500; (2) payment of compensation equivalent to sum that would have been paid had notice been given on 30 May 2008	2010-UNAT-94	Dispute Tribunal decision on compensation was vacated	N/A	N/A	N/A
UNDT/2010/065	Krioutchkov	New York	United Nations Office at Vienna	$500	N/A	N/A	$500.00	500.00	08/07/2010

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Apneals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/068	Chen	New York	United Nations (Department for General Assembly and Conference Management)	(1) Difference in salary, allowances and other entitlements between relevant P-3 and P-4 level and step, from 17 August 2006 until date of retirement, including the equivalent of loss in pension rights; (2) compensation equivalent to six months' net base salary at appropriate P-4 level and step	2011-UNAT-107	Affirmed	$36 256.94	36 256.94	08/07/2011
UNDT/2010/071	Hastings	New York	United Nations (Advisory Committee on Administrative and Budgetary Questions)	(1) $5,000; (2) 10 per cent of difference between actual salary and what applicant would have received at the D-2 level, until the date of mandatory retirement; (3) 10 per cent of additional allowances and benefits at the D-2 level, including adjustment of pension contributions and consequent retirement benefits	2011-UNAT-109	(1) Duration of the damages modified to two years of the difference in salary and benefits; (2) no payment of moral damages	$2 971.74	2 971.74	17/06/2011
UNDT/2010/094	Bertucci	New York	United Nations (Department of Economic and Social Affairs)	$500	2011-UNAT-114	Affirmed	$500.00	500.00	N/A
UNDT/2010/095	Rolland	New York	United Nations (Department of Peacekeeping Operations)	$500	N/A	Dispute Tribunal judgement affirmed	N/A	N/A	N/A
UNDT/2010/116	Messinger	New York	United Nations Children's Fund	$5,000	N/A	N/A	$5 000.00	5 000.00	26/07/2010

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/117	Bertucci	New York	United Nations (Department of Economic and Social Affairs)	$655,000	2011-UNAT-121	Annulled	N/A	N/A	N/A
UNDT/2010/146	Beaudry	New York	United Nations Stabilization Mission in Haiti	$112,082	2011-UNAT-125	Dispute Tribunal judgement on compensation is vacated in its entirety	N/A	N/A	N/A
UNDT/2010/148	Applicant	New York	Office of the United Nations High Commissioner for Human Rights	$40,000 for emotional distress, including one month's net base salary already agreed to but not yet paid	N/A	N/A	$40 000.00	40 000.00	05/05/2011
UNDT/2010/156	Shkurtaj	New York	United Nations Development Programme	(1) Fourteen months' net base salary as at starting date of appointment of limited duration, as compensation for procedural violation; (2) in addition, $5,000 as compensation for the delay in considering the Ethics Office's recommendation	N/A	N/A	N/A	N/A	N/A
UNDT/2010/157	Bhatia	New York	United Nations (Department of Management)	(1) Payment of applicable special post allowance for December 2007-June 2008, with interest from the date the special post allowance was due until the date of payment; (2) $6,000 for emotional distress	N/A	N/A	$6 266.02	6 266.02	N/A

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2010/194	Fayek	New York	United Nations (Department of Public Information)	(1) Compensation for actual economic loss; (2) $15,000 compensation for breach of procedural rights (in addition to the three months' salary already paid); (3) $3,287 to be paid to the United Nations Joint Staff Pension Fund; (4) as an alternative, $3,287 is to be paid to the applicant	N/A	N/A	$35 114.21	35 114.21	11/03/2011
UNDT/2010/195	Aly et al.	New York	United Nations (Department for General Assembly and Conference Management)	Payment of $20,000 to each of the 24 applicants	N/A	N/A	$480 000.00	480 000.00	14/02/2011
UNDT/2010/200	Alauddin	New York	United Nations Development Programme	(1) Payment of net base pay (including entitlements) as if applicant had been renewed for the period from 1 January to 21 November 2008, less income for the same period; (2) payment of $30,000 for emotional harm	N/A	N/A			
UNDT/2010/205	Adorna	New York	United Nations Children's Fund	$15,000	N/A	N/A	$15 000.00	15 000.00	02/01/2011
UNDT/2010/213	Jennings	New York	Department of Management	$6,000 as compensation for emotional distress	N/A	N/A	N/A	N/A	N/A
UNDT/2011/004	Meron	New York	Office of the United Nations High Commissioner for Refugees	$25,000 for excessive and inordinate delays and emotional harm	N/A	N/A	$25 000.00	25 000.00	07/02/2011
UNDT/2011/012	Tolstopiatov	New York	United Nations Children's Fund	$97,324.04 as compensation	N/A	N/A	$97 324.00	97 324.00	30/03/2011

United Nations Dispute Tribunal judgement No.	*Applicant's last name*	*Registry*	*Entity*	*Compensation awarded by United Nations Dispute Tribunal*	*United Nations Appeals Tribunal judgement No.*	*Compensation awarded by United Nations Appeals Tribunal*	*Net amount paid (local currency)*	*Net amount paid (United States dollars)*	*Date*
UNDT/2011/018	Bridgeman	New York	United Nations Logistics Base/ Department of Peacekeeping Operations	Payment of compensation to be determined	N/A	N/A	N/A	N/A	N/A
UNDT/2011/032	Obdeijn	New York	United Nations Population Fund	(1) Six months' net base salary and entitlements (actual economic loss); (2) $8,000 (emotional distress)	N/A	N/A	N/A	N/A	N/A
UNDT/2011/034	Kamal	New York	Department for General Assembly and Conference Management	$10,000 for the emotional distress and anxiety suffered	N/A	N/A	N/A	N/A	N/A
UNDT/2011/058	Kozlov and Romadanov	New York	Department for General Assembly and Conference Management	Compensation to be decided	N/A	N/A	N/A	N/A	N/A
UNDT/2011/068	Garcia	New York	United Nations Development Programme	(1) $89,128.48 (lost salary and entitlements); (2) $241 (compensation for medical examination); (3) $50,000 (non-pecuniary loss)	N/A	N/A	$109 619.26	109 619.26	N/A
UNDT/2011/081	Cabrera	New York	United Nations (Department of Management)	Two years' net base salary in effect in January 2006 as compensation	N/A	N/A	N/A	N/A	N/A
UNDT/2011/084	Simmons	New York	United Nations (Office of Programme Planning, Budget and Accounts)	$3,500 as compensation	N/A	N/A	$6 504.63	6 504.63	08/07/2011
UNDT/2011/085	Simmons	New York	United Nations (Office of Programme Planning, Budget and Accounts)	$3,000 as compensation	N/A	N/A			

Note: "N/A" indicates either that no action was taken following the United Nations Dispute Tribunal judgement or that the judgement is still under appeal.

United Nations Appeals Tribunal judgement No.[a]	*Applicant's last name*	*Entity*	*Appeal from*	*Compensation*	*Net amount paid (United States dollars)*	*Date*
2010-UNAT-021	Asaad	United Nations Relief and Works Agency for Palestine Refugees in the Near East	United Nations Relief and Works Agency for Palestine Refugees in the Near East	Compensation equivalent to the difference between salaries at grades 8 and 14 (period from 1 July 2003 to 20 January 2004) and compensation equivalent to one month's salary at grade 14; in addition, reinstatement or payment of six months' net base pay	9 000.00	N/A
2010-UNAT-022	Abu Hamda	United Nations Relief and Works Agency for Palestine Refugees in the Near East	United Nations Relief and Works Agency for Palestine Refugees in the Near East	Refund of loss of salary suffered as a result of demotion	7 600.00	N/A
2010-UNAT-025	Doleh	United Nations Relief and Works Agency for Palestine Refugees in the Near East	United Nations Relief and Works Agency for Palestine Refugees in the Near East	Reinstatement or payment of two years' net base pay	19 000.00	N/A
2010-UNAT-030	Tabari	United Nations Relief and Works Agency for Palestine Refugees in the Near East	United Nations Relief and Works Agency for Palestine Refugees in the Near East	Retroactive payment of special occupation allowance	22 000.00	N/A
2010-UNAT-087	Liyanarachchige	United Nations Operation in Côte d'Ivoire/Department of Peacekeeping Operations	Reversing judgement No. UNDT/2010/041	12 months' net base salary as at the date of separation	47 440.00	07/03/2011

[a] United Nations Appeals Tribunal judgements awarding compensation in cases not considered by the United Nations Dispute Tribunal or where the Dispute Tribunal made no award for compensation.

C. United Nations Dispute Tribunal judgements with compensation equal to or more than six months' net base salary (1 July 2009-31 May 2011)

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/070	Farraj	Geneva	The Dispute Tribunal found that the contested decision to terminate appointment of limited duration had not been in compliance with terms of appointment	United Nations Development Programme	Rescission of the contested decision (alternatively, $45,000)	N/A	45,000	N/A
UNDT/2010/106	Eid	Geneva	The Dispute Tribunal found that the Administration should have paid the applicant termination indemnities as from the date that his termination became effective	United Nations Secretariat (United Nations Interim Force in Lebanon)	N/A	$29,991.23 and LL9,552.660 (termination indemnity and related entitlements)	N/A	N/A
UNDT/2010/120	Ostensson	Geneva	The Dispute Tribunal found that the selection process had been tainted by serious procedural irregularity, violating the applicant's right to full and fair consideration for a D-1 post	United Nations Conference on Trade and Development	Rescission of the contested decision (alternatively, $4,900)	$48,000 (emotional distress, harm to professional reputation)	52,900	N/A
UNDT/2010/122	Zerezghi	Geneva	The Dispute Tribunal found that the imposed disciplinary measure of dismissal had been disproportionate to the established misconduct	United Nations Secretariat (United Nations Interim Administration Mission in Kosovo)	(1) Retroactive reinstatement (alternatively, eight months' net base salary); (2) written censure; (3) removal of material relating to dismissal from his file	$60,000 (moral damage)	99,936.18	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/128	Ikpa	Geneva	The Dispute Tribunal found that the decision of separation from service had been an unlawful disciplinary measure	United Nations Office at Geneva	Six weeks' net base salary in lieu of notice (less one week already paid)	One year's net base salary (less any money already paid)	59,592	N/A
UNDT/2010/129	Valle Fischer	Geneva	The Dispute Tribunal found that the decision of separation from service had been an unlawful disciplinary measure	United Nations Office at Geneva	Six weeks' net base salary in lieu of notice (less one week already paid)	One year's net base salary (less two months already paid)	54,697	N/A
UNDT/2010/130	Applicant	Geneva	The Dispute Tribunal found that the decisions to terminate the applicant's appointment and to issue a reprimand had been in breach of his rights	International Criminal Tribunal for the Former Yugoslavia	Rescission of reprimand	(1) Three months' net base salary (prejudice resulting from the unlawful termination) (in addition to eight months previously paid); (2) three months' net base salary (unlawful reprimand)	50,263.50	N/A
UNDT/2010/133	Eldam	Geneva	The Dispute Tribunal found that the decisions of non-renewal of contract for unsatisfactory performance and to issue a reprimand had been flawed and improper	United Nations Secretariat (United Nations Observer Mission in Georgia)	(1) Rescission of non-renewal of appointment (alternatively, three months' net base salary); (2) withdrawal of reprimand	Three months' net base salary (moral damage)	26,204.40	N/A
UNDT/2009/088	Nogueira	Nairobi	The Dispute Tribunal found that the decision not to renew appointment on grounds of performance had been procedurally defective and could not be sustained	United Nations Office at Nairobi/ United Nations Environment Programme	N/A	24 months' net base salary	210,794	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/002	Xu	Nairobi	The Dispute Tribunal found that the decision not to select the applicant for a P-4 level post had been unlawful	United Nations Secretariat	N/A	Six months' net base salary (injury suffered)	N/A	Set aside by Appeals Tribunal in Xu 2010-UNAT-053 and remanded to Dispute Tribunal
UNDT/2010/053	Mmata	Nairobi	The Dispute Tribunal found that the charge of serious misconduct was not well founded and that separation from service had been disproportionate	United Nations Children's Fund	Rescission of the contested decision and reinstatement	(1) Lost earnings from the date of separation; (2) 2 years' net base salary	222,453.57	Prime rate interest on the awarded compensation (see Mmata 2010-UNAT-092)
UNDT/2010/056	Masri	Nairobi	The Dispute Tribunal found that the disciplinary measure of summary dismissal had been disproportionate	United Nations Secretariat (United Nations Organization Mission in the Democratic Republic of the Congo)	(1) Reinstatement with payment of lost earnings (alternatively, two years' net base salary); (2) demotion by four steps	N/A	N/A	Overturned by Appeals Tribunal in Masri 2010-UNAT-098
UNDT/2010/057	Ianelli	Nairobi	The Dispute Tribunal found that the applicant was entitled to assignment grant and other entitlements afforded to internationally recruited staff	United Nations Office for Project Services	N/A	Payment of applicable assignment and relocation grants with appropriate interest	51,395.35	Appeals Tribunal amended the orders on the payment of interest (see 2010-UNAT-093)

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/061	Sanwidi	Nairobi	Judgement on compensation following Sanwidi UNDT/2010/036, in which the Dispute Tribunal found that the decision of summary dismissal had been disproportionate	United Nations Secretariat (United Nations Organization Mission in the Democratic Republic of the Congo)	(1) Reinstatement (alternatively, two years' net base salary); (2) written reprimand	Lost earnings from the date of summary dismissal to the date of reinstatement, less $2,600 per month	N/A	Dispute Tribunal judgement is vacated in Sanwidi 2011-UNAT-104
UNDT/2010/097	Lutta	Nairobi	Judgement on compensation following Lutta UNDT/2010/052, in which the Dispute Tribunal found, inter alia, that the investigation of the applicant and the actions taken against him had been procedurally flawed and improper	United Nations Secretariat (United Nations Operation in Côte d'Ivoire)	N/A	(1) Three months' net base salary (loss of career advancement opportunities); (2) $4,760 (travel costs); (3) six months' net base salary (moral damages)	46,339.86	Affirmed by Appeals Tribunal in Lutta 2011-UNAT-117
UNDT/2010/118	Cohen	Nairobi	The applicant contested the summary dismissal. The Dispute Tribunal found that her actions had not amounted to misconduct and that her due-process rights had been violated	United Nations Secretariat (United Nations Organization Mission in the Democratic Republic of the Congo)	Rescission of the contested decision and reinstatement of the applicant (alternatively, two years' net base salary)	(1) Payment of salaries and entitlements from the date of dismissal to the date of judgement; (2) two months' net base salary (breach of due-process rights)	101,624	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/119	Gaskins	Nairobi	The applicant contested the decision to terminate his appointment. The Dispute Tribunal found that the applicant's contract of employment had been breached, which had resulted in damage to his self-image and reputation	United Nations Development Programme	N/A	Six months' net base salary (violation of due-process rights, humiliation, distress and damage to reputation)	40,420.98	N/A
UNDT/2010/124	Frechon	Nairobi	The Dispute Tribunal found that the applicant's employment had been improperly terminated for medical reasons	International Criminal Tribunal for Rwanda	Rescission of the decision to terminate the applicant's employment, reinstatement (alternatively, two years' net base salary)	(1) Payment of lost earnings from the date of termination to the date of reinstatement; (2) payment of entitlements for the period from March 2007 to July 2007	N/A	N/A
UNDT/2010/153	Verschuur	Nairobi	The Dispute Tribunal found that the selection process had been improperly interfered with and that the applicant had been denied full and fair consideration for a P-5 post	United Nations Human Settlements Programme	N/A	Six months' net base salary (detriment to career progression)	N/A	N/A
UNDT/2010/154	Contreras	Nairobi	The Dispute Tribunal found that the selection process had been improperly interfered with and that the applicant had been denied full and fair consideration for the post	United Nations Human Settlements Programme	N/A	(1) Six months' net base salary (detriment to career progression); (2) token sum of $1 (moral injury).	N/A	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/173	Parkes	Nairobi	The Dispute Tribunal found that the contested summary dismissal had been disproportionate	United Nations Secretariat (United Nations Organization Mission in the Democratic Republic of the Congo)	Rescission of the decision (alternatively, compensation equivalent termination benefits)	N/A	57,503.39	N/A
UNDT/2010/175	Bekele	Nairobi	The applicant contested the decision to separate him from service, as well as several related decisions. The Dispute Tribunal found that the applicant's rights had been violated.	Economic Commission for Africa	N/A	(1) Salary from November 2007 to March 2009; (2) six months' net base salary (breach of due-process rights)	N/A	N/A
UNDT/2010/185	M'Bra	Nairobi	The Dispute Tribunal found that the decision of summary dismissal had been unlawful	United Nations Secretariat (United Nations Organization Mission in the Democratic Republic of the Congo)	Reinstatement (alternatively, payment of two years' net base salary)	(1) Salary and entitlements from the date of his summary dismissal to the date of judgement; (2) two months' net base salary (breach of due-process rights)	377,257.92	N/A
UNDT/2010/197	Bowen	Nairobi	The Dispute Tribunal found that the termination based on unsatisfactory performance had been unlawful	United Nations Development Programme	Rescission of the contested decision	(1) Three months' net base salary and benefits (less any payments made in lieu of notice); (2) two years' net base salary	N/A	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/214	Kamunyi	Nairobi	The Dispute Tribunal found that the contested decisions to suspend the applicant from service, to place him on special leave with full pay and to issue a reprimand had been unlawful	United Nations Office at Nairobi	Rescission of three unlawful decisions (unlawful suspension, placement on special leave with full pay for one year and eight months, and reprimand)	Two years and six months' net base salary (emotional and physical harm and damage to reputation)	N/A	N/A
UNDT/2011/017	Harding	Nairobi	The applicant contested summary dismissal. Liability being admitted by the respondent, this case concerned only whether the amount of two years' net base salary paid was adequate	Office of the United Nations High Commissioner for Refugees	Rescission of summary dismissal (alternatively, two years' net base salary)	(1) Six months' net base salary (breach of due-process rights); (2) special post allowance for four months; (3) six months' net base salary (emotional distress and humiliation); (4) salaries and entitlements at the G-6 level from June 2005 to December 2010	N/A	Special post allowance with interest has been paid; other items are pending on appeal

Judgement No	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2011/060	Finniss	Nairobi	The Dispute Tribunal found that the applicant's rights had been violated with respect to two P-5 selection exercises	United Nations Secretariat (Office of Internal Oversight Services)	N/A	(1) 18 months' net base salary (failure to afford proper consideration in selection for the first post); (2) six months' net base salary (failure to afford proper consideration in selection for the second post)	N/A	N/A
UNDT/2011/067	Borhom	Nairobi	The Dispute Tribunal found that the decision to summarily dismiss had been unlawful	Office of the United Nations High Commissioner for Refugees	Rescission of summary dismissal and reinstatement (alternatively, two years' net base salary)	(1) Six months' net base salary (moral damage); (2) six months' net base salary (violation of due-process rights)	27,660	N/A
UNDT/2011/092	Xu	Nairobi	The Dispute Tribunal found that the selection exercise had been tainted with procedural irregularities and that the applicant had been denied full and fair consideration for a P-4 post	United Nations Secretariat (Department for General Assembly and Conference Management)	N/A	(1) Two months' net base salary (procedural violations); (2) four months' net base salary (failure to give full and fair consideration); (3) $500 (failure to inform of non-selection)	N/A	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/026	Kasyanov	New York	The Dispute Tribunal found that the applicant had not been considered for a P-4 vacancy in accordance with the applicable rules	United Nations Secretariat (Department for General Assembly and Conference Management)	Lateral move recorded as having taken place (alternatively, $20,000)	$59,932 (actual economic loss, breach of rights, delayed prospect of promotion, emotional distress)	13,969.83 (two months' salary actually paid)	Awarded compensation was amended to two months' net base salary (Kasyanov 2010-UNAT-076)
UNDT/2010/040 and Order No. 57 (NY/2010)	Koh	New York	Judgement and order on compensation following Koh UNDT/2009/078, in which the Dispute Tribunal found that the Organization had breached the applicant's contract of employment by not assisting him in finding suitable employment	United Nations Development Programme	N/A	(1) $2,000 (loss of the right to candidacy); (2) $107,107.60 (economic compensation)	2,000 and 107,107.60	N/A
UNDT/2010/055	Abbasi	New York	The Dispute Tribunal found that the selection process had been discriminatory and in breach of the applicant's rights	United Nations Children's Fund	N/A	(1) 12 months' net base salary (loss of opportunity of being appointed, loss of career development); (2) $30,000 (emotional distress)	N/A	Overturned by Appeals Tribunal in Abbasi 2011-UNAT-112

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/068	Chen	New York	The Dispute Tribunal found that the decision not to reclassify the applicant's post from the P-3 to the P-4 level had been in breach of Staff Regulations and the principle of equal pay for work of equal value	United Nations Secretariat (Department for General Assembly and Conference Management)	N/A	(1) Six months' net base salary (non-material damages: frustration, humiliation and delay); (2) difference in salary between the P-3 and the P-4 levels from August 2006 until retirement (actual economic loss)	36,256.94	Upheld by Appeals Tribunal in Chen 2011-UNAT-107
UNDT/2010/117	Bertucci	New York	Judgement on compensation following Bertucci UNDT/2010/080, in which the Dispute Tribunal found that the decision not to appoint the applicant to the post of Assistant Secretary-General had been in breach of his rights	United Nations Secretariat (Department of Economic and Social Affairs)	N/A	$655,000 (economic and non-economic damages)	N/A	Set aside by Appeals Tribunal in Bertucci 2011-UNAT-121 and remanded to Dispute Tribunal
UNDT/2010/146	Beaudry	New York	Judgement on compensation following Beaudry UNDT/2010/039, in which the Dispute Tribunal found that the decision not to renew the applicant's contract had been unlawful	United Nations Secretariat (United Nations Stabilization Mission in Haiti)	N/A	$112,082 (actual economic loss, distress and procedural violations)	N/A	Vacated by Appeals Tribunal as a result of Beaudry 2010-UNAT-085

Judgement No	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2010/156	Shkurtaj	New York	The applicant contested, inter alia, the decision not to implement the recommendation of the Ethics Office to pay him compensation for the violation of his rights. The Dispute Tribunal held for the applicant in part, finding that, in relation to some of his claims, his rights had been violated	United Nations Development Programme	N/A	(1) 14 months' net base salary (due-process violations, damage to career and reputation, and emotional distress); (2) $5,000 (procedural delay in addressing the Ethics Office's recommendation)	N/A	N/A
UNDT/2010/200	Alauddin	New York	Judgement on compensation following Alauddin UNDT/2010/114, in which the Dispute Tribunal found that the applicant's rights had been breached when the Organization had failed to renew his contract	United Nations Development Programme	N/A	(1) net base pay, including entitlements, for 11 months, less the applicant's income for the same period (actual economic loss); (2) $30,000 (emotional harm)	N/A	N/A
UNDT/2011/012	Tolstopiatov	New York	Judgement on compensation following Tolstopiatov UNDT/2010/147, in which the Dispute Tribunal determined that the United Nations Children's Fund had breached its obligations to the applicant following the abolishment of post	United Nations Children's Fund	N/A	$97,324.04 (lost income and entitlements)	97,324	N/A

Judgement No.	*Applicant*	*Registry*	*Brief synopsis*	*Entity*	*Rescission or specific performance ordered*	*Compensation ordered*	*Total amount paid in United States dollars*	*Affirmed or overturned on appeal as at 31 May 2011*
UNDT/2011/032	Obdeijn	New York	Respondent refused to disclose the reasons for the contested non-renewal. The Dispute Tribunal therefore found that the contested decision had been unlawful	United Nations Population Fund	N/A	(1) Six months' net base salary and entitlements (actual economic loss); (2) $8,000 (emotional distress)	N/A	N/A
UNDT/2011/068	Garcia	New York	The Dispute Tribunal found that the United Nations Development Programme had breached its contract with the applicant by failing to execute the employment relationship	United Nations Development Programme	Removal of adverse material from the applicant's personnel file	(1) $89,128.48 (lost salary and entitlements); (2) $241 (compensation for medical examination); (3) $50,000 (non-pecuniary loss)	109,619.26	N/A
UNDT/2011/081	Cabrera	New York	The Dispute Tribunal found that the decision to place the applicant on special leave with full pay had been unlawful	United Nations Secretariat (Department of Management)	N/A	Two years' net base salary for due-process violations, humiliation and emotional distress	N/A	N/A

Note: "N/A" indicates either that no action was taken following the United Nations Dispute Tribunal judgement or that the judgement is still under appeal.